

In the High Court of Judicature at Madras

Dated : 09.01.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.188 of 2014

M/s.Aghora Enterprises Pvt. Ltd.,
Rep. by Mr.T.Rathinam. .. Petitioner

-vs-

P.R.Selvarajan ... Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes arising out of the Agreement dated 30.09.2013 between the petitioner and the respondent.

For Petitioner : Mr.S.Nithyaesh Nataraj

For Respondent : Mr.V.Bhiman
for M/s.Sampathkumar Asso.

* * * * *

O R D E R

सत्यमेव जयते

The petitioner is stated to be engaged in the business of assessment, dismantlement, buying of locked out factories and plants. The parties entered into a Memorandum of Agreement on 30.09.2013 for the sale of materials stored on the rear side of the site No.9 and 10, Elaiya Mudali Street, Tondiarpet, Chennai-600081. The total material is alleged to have weighed and valued to fetch about

paid.

2.The petitioner alleges that the scraps fetched only Rs.71 lakhs in the open market and thus, sought refund of the balance amount received by the respondent, which has not been acceptable to the respondent.

3.The petitioner also instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), which, after an initial round of litigation, has resulted in a favourable order to the petitioner, though a review petition filed by the respondent, is stated to be under consideration.

4.The clause for resolution of disputes is No.11 of the agreement, which reads as under:

'11. In case of any dispute or disagreement both Parties shall amicably sort out the same by mutual discussion failing which both the Parties shall appoint an arbitrator to sort out the differences.'

5.Since the disputes could not be resolved, the present petition has been filed under Section 11(6) of the said Act.

6.The petition is opposed by the respondent primarily on the ground that the agreement is vitiated by fraud. A perusal of the counter-affidavit shows that all

the averments are on the merits of the controversy and all that is stated qua agreement is that it could not be envisaged that such a situation would arise. It could be trite to say that this Court is really not concerned with the merits of the claim or the defence pleaded by the respondent.

7. On a query being posed as to when the plea of fraud was first raised, there is no satisfactory answer nor there being any material other than the counter-affidavit placed before me. Be that as it may, in view of the prevalent legal position, even such issue of fraud is to be adjudicated by the Arbitrator (**Reliance Industries Limited & Anr. vs. Union of India, (2014) 7 SCC 603**). Thus, I would not like to comment on the merits of the case and it is open to the respondent to raise the same before the Arbitrator.

8. It is, thus, clear that disputes have arisen inter se the parties, there is written agreement for resolution of disputes through arbitration. The petitioner, vide letter dated 26.01.2014, had earlier proposed Mrs. Justice Prabha Sridevan, a retired Judge of this Court, to be appointed as the Sole Arbitrator and there has been no specific objection by the respondent.

9. In view of aforesaid and as proposed by the learned counsel for parties, I, thus, appoint Mrs. Justice Prabha Sridevan, a retired Judge of this Court, as the Sole

Arbitrator, to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne equally by both the parties.

10. Accordingly, the original petition is allowed, leaving the parties to bear their own costs.

Sd/. (S.K.K., CJ.)
09.01.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/03.03.2015
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

COURT OFFICER

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