

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2015

C O R A M

The Hon'ble Mr. **SANJAY KISHAN KAUL**, Chief Justice

Original Petition No.435 of 2015

M/s.Eagic Enterprises

By its Proprietrix Sundarambal (since deceased)

represented by J.Lakshmi

No.15, Devakiammal Street,

Shenoy Nagar, Chennai 600 030

.. Petitioner

versus

The Superintending Engineer (H)

Tamil Nadu Urban Development Project

Coimbatore 641 043,

now as the Special Chief Engineer (H)

Project Circle,

Coimbatore 641 043.

.. Respondent

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator to hear and decide the claims of the petitioner arising out of the contract agreement dated 09.10.1997.

For Petitioner : Mr.K.K.Muralitharan

ORDER

The petitioner claims that disputes have arisen from agreement inter se the parties. The relevant clause for resolution of disputes is Clause-53 which reads as under:

“Resolution of Disputes:

Settlement of Claims by Arbitration:

All disputes or differences in respect of which the decision is not final and conclusive, if the claims monetary value is less than Rs.2.00 lakhs (Rupees two lakhs) shall be referred for arbitration to a sole arbitrator. The superintending Engineer, Chennai Circle or his successor in his office.

The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modifications thereof. The decision of the sole arbitrator shall be final and binds on the parties thereto. The arbitrator shall determine the amount of arbitration to be awarded to either parties.

Performance under the contract shall continue during arbitration proceedings and payments due to the contractor by the owner shall not be withheld, unless they are the subject matter of the arbitration proceedings.

All awards shall be in writing and such awards shall state reasons for the amounts awarded.

Neither party is entitled to bring a claim to arbitration if the Arbitrator has not been appointed before the expiration of thirty days after defect liquidity period.

If the claims exceed monetary value of more than Rs.2.00 lakhs (Rupees two lakhs) the same shall be referred to the Civil Court having jurisdiction for decision."

2. It is quite apparent from a bare reading of the clause, what is envisaged is the mode of arbitration of disputes up to Rs.2 lakhs and beyond Rs.2 lakhs, the ordinary civil original jurisdiction of the courts would have to be invoked. This view is fortified by the Judgment reported in *2006(1)CTC 769 (Rajaram Engineering Contractors vs. The State of Tamil Nadu)*.

3.The petitioner apparently has been knocking all the wrong doors, first by a writ petition, next by Section-11 petition under the Arbitration and Conciliation Act before the trial Court and then the present petition before this Court.

4.The writ petition is thus dismissed as not maintainable and it is for the petitioner to take recourse to the appropriate legal remedy after

invoking the ordinary civil original jurisdiction of the civil courts in accordance with law, leaving the parties to bear their own costs.

(S.K.K., CJ.)

Index:yes/no

19.06.2015

ksr

To

The Superintending Engineer (H)
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Project Circle,
Coimbatore 641 043.

The Hon'ble The Chief Justice

(ksr)

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