

In the High Court of Judicature at Madras

Dated : 27.11.2015

Coram :

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

O.P.No.842 of 2015

M/s.Haven Foundation (P) Ltd.,
Rep. by its C.E.O., Mr.D.R.J.Kothandaraman. .. Petitioner

-VS-

1.Anita Asokan
2.Amrita Asokan
3.A.Asokan
4.Padma Asokan .. Respondents

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to resolve the dispute between the petitioner and the respondents based on the agreement dated 23.12.2010.

For Petitioner : Mr.P.Raja

For Respondents : No appearance

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O R D E R

A Joint Venture Agreement was executed between the petitioner and the 4th respondent and another one between the petitioner and the 3rd respondent both on 22.12.2010 in respect of

development of immovable property bearing Survey Nos.170/3A part, 137/1A1A1D part, 137/1A1A1B part in Nandambakkam Village, Tambaram Taluk, Kanchipuram District. The petitioner is the developer of the property. A subsequent Memorandum of Understanding dated 23.12.2012 was executed, which is between the petitioner and all the respondents.

2.The petitioner, in the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), alleges disputes arising from these agreements and MOU including qua some lands which continue to be classified as water body and thus, incapable of development. Ultimately, some amount paid by the petitioner to the 3rd and 4th respondents was refunded on this account, but balance amount remained unpaid.

3.The petitioner issued a notice dated 20.05.2013 to all the four respondents referring to the arbitration for construction of flats including in respect of the property of the first two respondents and alleging the consequences arising from false promise of 3rd and 4th respondents. The notice claims that if the amount spent by the petitioner is refunded by the first two respondents amounting to Rs.20 lakhs, the matter may be settled, failing which suggesting arbitration.

The respondents jointly replied through counsel's letter dated 25.06.2013 denying any liability, though it was stated that the issues could be resolved by payment of Rs.10 lakhs as full and final settlement, not acceptable to the petitioner.

4. Notice was issued in the present petition filed by the petitioner and the office report is that the notices have remained unclaimed despite intimation. Respondents are, thus, deemed to have been served.

5. We may notice that really the only issue in the present case is as to who should be the Arbitrator, since the reply dated 25.06.2013 states in para 8 that they were willing to resolve the disputes through arbitration, but not one suggested by the petitioner. Thus, in a sense the parties are at ad idem on the resolution of disputes through arbitration though not on the Arbitrator.

6. I, thus, appoint **Mr.S.R.Raghunathan, Advocate**, residing at New No.18, Old No.9, Sadasivam Street, Gopalapuram, Chennai 600 086, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested by learned counsel for parties, the arbitration proceedings will be conducted under

the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

7.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
27.11.2015

sra

Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii)The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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