

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2015

Coram

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.P.No.25 of 2013

Mudra Connex
(a division of Mudra Communications Pvt.Ltd.)
rep. by its Authorised representative,
Mr.R.Gowri Shankar
Mudra House, Opposite Grand Hyatt
Vakola, Santacruz (East)
Mumbai 400 055
And Branch Office at
Lloyds Road, Royapettah
Chennai 600 014. ... Petitioner

Vs

Masterpiece Communications
No.14, 1st Floor, Prakasam Street
T.Nagar, Chennai 600 017. ... Respondent

Prayer :-Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes between the petitioner and the respondent.

For petitioners .. Mr.Nanjeeb Usman Khan
for M/s Rugan & Arya

For Respondents .. No appearance

ORDER

This Petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve the disputes between the petitioner and the respondent.

2. Though notice was ordered to be served on the respondent, the same was returned unserved and therefore, the petitioner filed an Application for permitting him to effect substituted service and accordingly, permission was granted by the learned Master. Pursuant to which, paper publication was effected and proof of such publication was filed before the Master and on being satisfied about the manner of service effected, the Master by order dated 26.6.2015, ordered that the service is deemed, sufficient and service is completed and accordingly, the matter is listed for hearing.

3. In the cause list, the name of the respondent is printed and there is no appearance for the respondent. Therefore, this Court proceeded to hear the learned counsel for the petitioner and considered the contentions raised and the materials placed on record.

4.The petitioner is in the business of advertising and offering connected services and the respondent approached the petitioner for purchasing time and advertising space in different forms of media and an agreement to the said effect was entered into on 01.04.2009. Pursuant to the said agreement, the petitioner undertook such services and purchased slots in Newspapers, in T.V.Channels and in Radio Channels and raised invoices for the said works. However, the respondent failed to make payment.

5.According to the petitioner an amount of Rs.1,29,39,484 is payable by the respondent and the petitioner would state that the respondent confirmed the liability by signing at the bottom of the letters dated 22.11.2010 and 23.11.2010. It is stated that the cheques which were issued by the respondent, on presentation were dishonoured for which proceedings have been initiated by the petitioner under section 138 of the Negotiable Instruments Act and the matter is now pending before the 21st Metropolitan Magistrate, Bandra, Mumbai.

6.The learned counsel for the petitioner has drawn the attention of this Court to clause 17 of the Agreement dated 01.04.2009. For

better appreciation the said clause 17 is extracted below:

"17.The parties hereto specifically agree that in the event of any dispute and differences arising out of or in connection with this Agreement, shall be referred with Arbitration under Arbitration & Conciliation Act, 1996 within Chennai jurisdiction to try and adjudicate such disputes."

7.In view of the above, in the event of any dispute and differences arising out of or in connection with the agreement, the same shall be referred to Arbitration under the provisions of the Act within Chennai jurisdiction. The petitioner sent legal notice on 06.08.2011, pointing out the above facts, suggesting names of three retired Hon'ble Judges of this Court, to act as the sole Arbitrator in accordance with the provisions of the Act. It was further stated in the said notice that within thirty days from the date of receipt of the notice, the respondent may choose to accept any one of the names suggested, failing which the petitioner would be constrained to initiate appropriate proceedings under the provisions of the Act.

8.Since the petitioner did not receive the postal acknowledgment card, they lodged a complaint lodged before the Post Master on 27.8.2011, pursuant to which the petitioner's counsel were informed

that the registered letter sent to the respondent dated 06.08.2011 has been delivered on the addressee (respondent) on 09.08.2011.

9.In the light of the above facts, this Court is satisfied that there has been a binding Arbitration Agreement between the parties and the present issue raised by the petitioner would undoubtedly fall within the scope of arbitration as it is the dispute arising out of and in connection with the agreement entered between the parties and therefore, the matter has to be adjudicated by the learned Arbitrator in accordance with the provisions of the Act.

10.In the light of the above, I appoint

The Hon'ble Mr.Justice K.P.Siva Subramanian (Retd)

No.47, Pulla Avenue,

Shenoy Nagar, Chennai – 600 030

Mobile No.9444701312

Land Line: 044-26208788

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. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by

the parties equally. In the event of respondents not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

The Original Petition is accordingly allowed, leaving the parties to bear their own costs.

18.09.2015

rpa
Index :Yes/No

T.S.SIVAGNANAM, J.
rpa

Order in
O.P.No.25 of 2013

18.09.2015