

In the High Court of Judicature at Madras

Dated : 18.03.2016

Coram :

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

O.P.No.143 of 2014

M/s.Jayes Trades
General Merchants, Rep. by its
Managing Partner, Mr.P.K.Rony. ... Petitioner

-vs-

Tamil Nadu Co-operative Milk
Producers Federation Limited,
Rep. by its Managing Director,
No.3A, Pasumpon Muthuramalingam Salai,
Nandanam, Chennai. ... Respondent

Petition filed under Section 11 (6) of the Arbitration
and Conciliation Act, 1996, to appoint an Arbitrator as
Sole Arbitrator to adjudicate upon the difference and
disputs that have arisen between the Parties hereto under
the Clearing and Forwarding Agreement dated 22.11.2003.

For Petitioner : Mr.S.Subbaiah

For Respondent : Mr.U.S.Vijayasarathy

* * * * *

O R D E R

The petitioner, a partnership firm, entered into a Clearing and Forwarding Agency agreement dated 22.11.2003 containing an arbitration clause No.29 as under:

'xxix) All disputes between the C&F Agent and the Principal in relation to this Agreement shall be the subject matter of arbitration, the sole arbitrator to be named by the Principal.'

2.Disputes are stated to have arisen from the aforesaid agreement resulting in ultimately a legal notice being served by the petitioner dated 30.08.2013 on the respondent claiming a sum of Rs.7,25,529.69 or if not agreeable to the same, to refer the disputes to arbitration. The respondent was called upon to nominate the Arbitrator as per Clause 29. The aforesaid letter was delivered on 31.08.2013 as per the confirmation of the postal department dated 21.11.2013.

3.No reply to the notice was sent nor an Arbitrator appointed resulting in the petitioner filing the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

4.The respondent was served, but chose not to file any reply. The matter was posted before the Court on 27.11.2015

when the learned counsel for the petitioner requested that as a measure of abundant caution, he would serve private notice on the standing counsel / panel counsel for the respondent-Federation. The needful was done, but still nobody appeared and the name was printed in the cause list as per order dated 01.02.2016. On 02.02.2016, learned counsel entered appearance and undertook to file a vakalat. Two weeks time was granted to file reply. No reply has been filed.

5. In the aforesaid circumstances, it is a case of no return.

6. It is really not in dispute that the agreement inter se the parties contains an arbitration clause requiring the respondent to nominate an Arbitrator, but despite legal notice dated 30.08.2013, the respondent failed to nominate an Arbitrator. Thus, there is no issue over the arbitrability of the dispute nor over the jurisdiction of the Court.

7. In view of the aforesaid, I appoint **Mr. Anand Venkatesh, Advocate present in Court**, having office at 337, New Addl. Law Chambers, High Court, Chennai, Ph: 94440 14881, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested, 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.

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

sd/.S.K.K.,CJ.

18.03.2016

//Certified to be a true copy//

Dated this the day of 2016

s.s/27.04.2016

COURT OFFICER

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

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