

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.51 of 2016 and
CMP No.258 of 2016

The Project Director
Project Implementation Agency
Emergency Tsunami Reconstruction Project
5th Floor, A Block
PKC Educational Complex,
100 Ft Road, Puducherry.

...Petitioner

versus

Mukesh & Associates
Rep. by P.A.holder Sri A.Dhirajlal
No.2/6 - Ranganathar Avenue
Narsodhipatti
Salem 636 004.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order passed by the III Additional District Judge at Salem in I.A.No.269 of 2015 in O.S.No.188 of 2014 dated 03.12.2015.

For Petitioner : Ms.Reena Iswarya
Additional Government Pleader
(Pondicherry)

For Respondent : Mr.V.Raghavachari

ORDER

The learned III Additional District Judge, Salem, after allowing the petition filed by the petitioner under Section 8 of Act 26 of 1996, directed the parties to furnish the list of Arbitrators on or before 05.01.2016. The order is challenged on the ground that after passing an order directing the parties to approach the Arbitral Tribunal for resolution of the dispute, the Trial Court was not correct in directing the parties to furnish the names of Arbitrators for making appointment. In short, it is the contention of the petitioner that it is the prerogative of the Hon'ble Chief Justice to name the Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996.

2. Heard the learned Additional Government Pleader for the petitioner and the learned counsel appearing on behalf of the respondent.

3. The respondent filed a suit before the District Court, Salem, against the petitioner, praying for a decree of declaration that they have performed their part of the contract in terms of the agreement and the petitioner herein is liable to settle the consultancy fees. Before the III Additional District Judge, Salem, the petitioner contended that

there is a provision for arbitration and as such, the suit filed by the respondent without availing the alternative remedy is not maintainable. The application was opposed by the respondent.

4. The learned III Additional District Judge, Salem, allowed the application in I.A.No.269 of 2015 by order dated 03.12.2015. In the normal course, when it is found that there is a provision for arbitration, the Trial Court shall refer the parties to arbitration. In the subject case, the learned III Additional District Judge, Salem, exceeded his jurisdiction by calling upon the parties to submit a panel containing the names of arbitrators to make appointment. By directing the parties to name the Arbitrators, the learned Judge indicated that the Court proposes to exercise the power conferred on the Hon'ble Chief Justice under Section 11(5) of the Arbitration and Conciliation Act. The petitioner, is therefore, perfectly correct in contending that the Trial Court was not expected to post the matter for filing the list of Arbitrators after allowing the application under Section 8 of the Arbitration and Conciliation Act.

5. The learned Additional Government Pleader appearing on behalf of the petitioner submitted that the petitioner would move the Hon'ble Chief Justice under Section 11(5) of the Arbitration and

K.K.SASIDHARAN, J.
(svki)

Conciliation Act to appoint an Arbitrator. The said submission is recorded.

6. The order passed by the learned III Additional District Judge, Salem, to the extent of directing the parties to produce the panel containing the names of Arbitrators is set aside.

7. In the up shot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2016

Index : Yes/No
svki

To

The III Additional District Court, Salem

C.R.P.(P.D.) No.51 of 2016