

In the High Court of Judicature at Madras

Dated : 04.11.2016

Coram :

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

O.P.No.548 of 2016

T.Karphurajh,
Proprietor AR.KJ.KAR Builders,
69, Guruvthai Illam,
Vallalar North Street, 3rd Floor,
Near Ganesa Rice Mill,
Sivakasi-626 123,
Virudhunagar District.

.. Petitioner

-VS-

Dr.K.R.Vasuki

.. Respondent

Petition filed under Section 11(6) (A) & (C) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to resolve all disputes arising out of the Agreement for Construction of Residential/Hospital Building dated 12.09.2011.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.E.Pandian
for
Mr.S.Palanivelayutham

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ORDER

The agreement for construction of residential/hospital building at Sivakasi dated 12.09.2011 was entered into *inter se* the parties, whereby the petitioner was engaged as contractor. There appears to have been a

problem at the very inception and suffice to say that disputes arose *inter se* the parties. The arbitration clause is as under:-

"19.All differences and dispute in relation to the terms of this agreement or the construction of all proposed building or finishing there of occupation or in relation thereto shall be referred to an arbitrator, at the option of the owner whose decision shall be final and binding on the parties."

The aforesaid clause is not by itself, as the following clause 20 reads as under:-

"20.In the event of arbitration is not satisfactory to either of the parties herein; the specific issues shall be referred to the courts of jurisdiction Madurai city."

2. The allegation in the petition and the counter clearly shows existence of disputes and the jurisdiction of this Court is not denied. The arbitration clause is not happily worded. But the submission of the learned counsel for the petitioner is that the same implies that appointment of an Arbitrator can be by the respondent.

3. In my view, the clauses do not give rise to some doubt. But the reply filed by the respondent in the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 in Arbitration O.P.No.1 of 2012 in the Court of the Principal District and Sessions Court, Virudhunagar District at Srivilluputtur shows that in paragraph 5, it has been categorically averred that the construction agreement dated 12.09.2011 provides for an arbitration clause for settling the dispute arising between the parties.

4. In the present proceedings, the Court is not required to go into the merits of the claim. But the arbitration clause is not being in dispute, a reference is liable to be made to the Arbitrator to adjudicate the disputes *inter se* the parties.

5. The jurisdiction being of Madurai Courts, it is suggested that the arbitration should be held at Madurai itself.

6. I, thus, appoint Mr.C.Manickam, a retired District Judge, as the Sole Arbitrator to enter upon the reference, adjudicate the disputes *inter se* the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of communication of the order. The venue of arbitration will be Madurai.

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

(S.K.K., CJ.)
30.09.2016

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Note: Mark a copy to the Arbitrator, as referred above.

The Hon'ble Chief Justice

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