

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2017

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.428 of 2017

M/s.R.R.Promoters
rep. by its Partner Mr.R.Ramesh .. Petitioner

-vs-

1.S.Senthil Kumar
2.G.Edward Ligor Raja .. Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to constitute an arbitral tribunal consisting of a Sole Arbitrator, seated in Coimbatore, to decide all disputes under the Joint Development Agreement dated 17.11.2011.

For Petitioner : Mr.K.Venkatasubban

For Respondents : No appearance

ORDER

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This petition is filed seeking an appointment of Arbitrator to enter upon reference and to adjudicate upon the disputes that have arisen between the parties out of Joint Development Agreement dated 17.11.2011.

2.The petitioner is a developer and entered into a Joint Development Agreement dated 17.11.2011 with the respondents for the development of a property at Coimbatore. Disputes arose between the parties pursuant to which a legal notice dated 03.03.2017 was issued by counsel on behalf of the petitioner seeking repayment of an advance of Rs.35,00,000/- along with interest at 18% per annum from March 2014, when, according to the petitioner, the construction was completed and invoking clause for arbitration in the event of failure to repay by the petitioner.

3.Since there was no response to the notice, the petitioner, by letter dated 11.03.2017, appointed one Mr.S.A.Sreeramulu, Retired District Judge, to adjudicate upon the disputes between the parties. The legal notice is countered by the respondent on 16.03.2017 denying the claims made by the petitioner and raising a counter claim at para 15 of the reply to the effect that an amount of Rs.25,00,000/- paid as advance to the petitioner still remains outstanding and calling for the repayment of the same along with compensation. The respondents further rejected the nomination of the Arbitrator proposed by the petitioner by letter dated 22.03.2017.

4. Notice was directed to be issued to the respondents on 23.06.2017. An affidavit of service dated 12.07.2017 has been filed by the learned counsel for the petitioner to the effect that notice served on the respondents was returned with the endorsement 'addressee moved'. Learned counsel for the petitioner was thereafter directed to take fresh steps and service was effected at the office address of the respondents, returned as 'not claimed'. The name of the respondents has been printed in the cause list and the matter adjourned to enable the presence of the respondents. The matter thus comes to be posted today i.e. 30.08.2017, when there continues to be no appearance on behalf of the respondent. Hence service is held sufficient.

5. It is seen that clause 26 of the agreement provides for arbitration, in the following terms:

26. Any disputes inter se between the parties shall be resolved by a common arbitrator as per the provisions of the arbitration and conciliation act.

6. Disputes between the parties are also clearly admitted insofar as the respondents have, while rejecting the claim raised by the petitioner, raised a counter claim. Accordingly and since disputes exist inter se parties, the clause for dispute resolution is liable to be given effect to.

Dr.ANITA SUMANTH,J.

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7.Since the Arbitrator proposed by the petitioner is not acceptable to the respondent, I thus appoint Ms.G.Malliga, Retired District Judge, having residence at No.1-B, Gowtham Mansion, Viswanathapuram Thudialore, Coimbatore (Mobile No.9944919567), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. She may, after issuing notice to all parties to this petition and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix her remuneration and other incidental expenses, which shall be borne by both the parties equally.

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

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