

In the High Court of Judicature at Madras

Dated : 17.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.604 of 2016

Joy Benjamin

.. Petitioner

-VS-

M/s.Selvi Builders,
(Consultants and Contractors)
rep. by its Proprietrix Mrs.P.S.Selvi
First Floor, N.P.Complex,
D-102/2 IInd Avenue Extension Road,
Anna Nagar East,
Chennai – 600 102.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to redress the disputes between the petitioner and the respondent as per the terms 20 of the agreement dated 19.02.2012 under the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr.R.Rajmohan

For Respondent : Notice Served
No Appearance

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ORDER

This petition has been filed seeking to appoint an Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent.

2. The petitioner and the respondent entered into a Joint Venture & Development Agreement dated 19.02.2012 and had agreed that the respondent has to put up residential flats with cost of the respondent after obtaining necessary building permission from the competent authority. The parties mutually agreed the right of ownership and enjoyment of the proposed construction of residential flats at the ratio of 45 : 55. The respondent delayed the construction work without any reason. Because of the delay in completing the construction work, the petitioner was suffered monetary loss. The act of the respondent is clear breach of the terms and conditions of the Joint Venture Agreement.

3. The relevant Clause 20 reads as under:-

"In the event of any dispute arising out of the above transaction between the party of the first part and party of the second part, the same shall be referred to an Arbitrator to be appointed jointly by the party of the first part and party of the second part in consultation with each other in accordance with the provisions of Arbitration and

Conciliation Act, 1996."

4. In the reply notice dated 23.09.2014 to the notice issued by the respondent dated 06.09.2014, the petitioner agreed for arbitration. In their notice dated 25.6.2015, the petitioner nominated Shri.M.Selwyndurai Jebakumar, Advocate as their nominee Arbitrator. Despite receipt of the said notice, the respondent has not appointed their nominee arbitrator. This resulted in filing of the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

5. Respondent has been served through paper publication, but none has put in appearance. No reply has been filed.

6. A perusal of the pleadings and the documents which are unrebutted shows that the agreement *inter se* the parties contains an arbitration Clause, that the disputes have arisen between the parties. Therefore, the matter is liable to be referred to arbitration.

7. The learned counsel for the petitioner states that the arbitration proceedings be held under the aegis of Madras High Court Arbitration Centre.

8. I, thus, appoint Mr.G.Palaniappan, a retired District Judge (Mobile No.9443335815), No.2B, Owner's Court, Montieth Street, Montieth Road, Egmore, Chennai-8, a retired District Judge as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. 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. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High Court Arbitration Centre is fixed on 10.04.2017 at 10.30 A.M. The Madras High Court Arbitration Centre is directed to intimate the date of commencement of proceedings to the respondent.

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

(H.G.R., ACJ.)
17.03.2017

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Acting Chief Justice

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