

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.24 OF 2017

ORDER:

The agreement of sale dated 14.04.2011 contains an arbitration clause. Clause 8.13 thereof stipulates that any dispute, difference or controversy arising between the parties under or in connection with or in relation to the agreement, shall be referred to arbitration; such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996; and shall be held at Hyderabad. On the basis of this agreement of sale, a tripartite agreement appears to have been entered into between the applicant on the one hand, and respondents 1 and 2 on the other, on 02.02.2015. A counter-affidavit is now filed, on behalf of the second respondent, stating that, in the absence of any arbitration clause in the tripartite agreement, the applicant cannot invoke the jurisdiction of this Court under Section 11(6) of the Act seeking appointment of an arbitrator to resolve the dispute between the applicant and the second respondent.

Sri M.S. Srinivas Ayyangar, Learned Counsel for the first respondent, states that they have no objection for appointment of an arbitrator. Sri K.B. Ramanna Dora, Learned Counsel for the second respondent would, however, contend that, in the absence of an arbitration Clause in the tripartite agreement, the applicant cannot seek appointment of an arbitrator to resolve the dispute between the applicant and the second respondent.

When I asked Sri V. Appa Rao, Learned Counsel for the applicants, whether there exists any arbitration Clause in the tripartite agreement, Learned Counsel would fairly state that there is none. He

would, however, contend that, since there is a legal relationship evidenced by the tripartite agreement, the second respondent cannot object to the appointment of an arbitrator. I must express my inability to agree. Section 11(4) enables a party to seek appointment of an arbitrator if an arbitrator is not appointed in accordance with the appointment procedure, and Section 11(6) enables a party to request the High Court to take the necessary measure if a party fails to act as requested under the appointment procedure prescribed in the agreement. It is not in dispute that the tripartite agreement does not contain an arbitration Clause and, in the absence of a prescribed appointment procedure, the jurisdiction of this Court, under Sections 11(4) and (6) of the Act, cannot be invoked.

Sri V. Appa Rao, Learned Counsel for the applicant, would however rely on Section 7(4)(c) to submit that, since the applicant sent a legal notice to which the second respondent replied, such exchange of correspondence would, itself, constitute an arbitration agreement. This submission is wholly unfounded. The requirement of Section 7(4)(c) is that an arbitration agreement would be held to be in writing if there is an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other. While the fact there exists a tripartite agreement is not in dispute, it is only if there is an arbitration agreement (or an arbitration clause in the tripartite agreement) would the applicant be entitled to invoke the jurisdiction of this Court, under Section 11(4) and (6) of the 1996 Act, seeking appointment of an arbitrator to resolve their disputes vis-à-vis the second respondent. In the absence of an arbitration agreement, I see no reason to appoint an arbitrator to

resolve the disputes between the applicant and the second respondent.

I consider it appropriate, therefore, to appoint Dr. Justice G. Yethirajulu, Flat No.501, Pruthvi Block, My Home Navadweepa Apart, Hi-Tech City, Madhapur, Hyderabad – 81, Retired judge of this High Court as the arbitrator to resolve the disputes between the applicant and the first respondent. The Learned Arbitrator shall fix his remuneration, and the incidental expenses for the arbitration proceedings, in consultation with the parties. The Learned Arbitrator is requested to complete arbitration proceedings, and pass an award at the earliest, preferably within six months from the date of commencement of the arbitral proceedings. He is also requested, to the extent possible, to hold sittings in the mediation centre of the High Court.

The arbitration application is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 22.12.2017.
MRKR