

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12TH DAY OF JULY 2018

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.A. No.298 of 2018

In the matter of Arbitration
and Conciliation Act, 1996
and

In the matter of Joint
Development Agreement dated
25.12.2014 between the
petitioner and the respondents

M/s.Indus Alliance Foundations India (P) Limited,
New No.Y-58, Old No.Y-15, 5th Avenue,
Anna Nagar, Chennai-600 040. ... Applicant

-Versus-

1. Mrs.S.Sri Devi,
No.275/1, Sangam Apartments,
Belly Area, Anna Nagar West,
Chennai-600 040.
2. Mrs.B.R.Sivakami,
No.272/1, Sangam Apartments,
Belly Area, Anna Nagar West,
Chennai-600 040.
3. Mr.S.Shamsuddin,
Flat No.7, Meena Apartment,
B-12, Second Avenue,
Anna Nagar East, Chennai-600 102.
4. Mrs.Poorani Sadagopan,
First Floor, 44, Nallanna Mudali Street,
Royapettah, Chennai-600 014.
5. Mr.M.Murali,
No.2, Y-24, Leela Flats,
5th Avenue, Anna Nagar West,
Chennai-600 040.
6. Mr.T.Madhusudhan,
No.192, Krishna Nahar Apartment,
Thiruvallur Salai, Mogappair East,
Chennai-600 037. ... Respondents

Original Application praying that this Hon'ble Court be pleased to pass an order of injunction, restraining the respondents, their men, agents, servants or anyone else acting under them, from in any manner, dealing with the property being land of an extent of 4854 sq.ft. comprised in Survey No.207 (part), Thirumangalam Village, bearing Old No.275, New No.7, Sangam Apartments, Belly Area, Anna Nagar West, Chennai-600 040 by entering into JDA or otherwise, pending disposal of the arbitration proceedings.

This Original Application coming on this day before this Court for hearing the court made the following order:-

This application has been filed seeking an order of injunction restraining the respondents, their men, agents, servants or anyone else acting under them, from in any manner, dealing with the property being land of an extent of 4854 sq.ft. comprised in Survey No.207 (part), Thirumangalam Village, bearing old No.275, New No.7, Sangam Apartments, Belly Area, Anna Nagar West, Chennai-600 040, by entering into JDA or otherwise pending disposal of the arbitration proceedings.

2. The case of the applicant, in a nutshell, is as follows :

(i) The applicant is a builder and the respondents are the owners of the flats, built by the Tamil Nadu Housing Board in the schedule mentioned landed property to an extent of 4854 sq.ft. The respondents approached the applicant for demolition of their dilapidated flats and promotion of new flats. After negotiations, the parties

entered into a Joint Development Agreement dated 25.12.2014 (in short "JDA"), as per which, the respondents offered an undivided 25% of the share of the land in consideration of the applicant constructing six flats in the remaining undivided 75% share of the land. The applicant paid a sum of Rs.6,00,000/- to the respondents and commenced the ancillary works.

(ii) The applicant stated that while the process of obtaining statutory clearances from the authorities are on, it engaged the services of an Architect and prepared the drawings, which were sent by e-mail to the flat owners on 02.04.2015. Since it was not accepted by them, a revised set of drawings were sent to them on 16.05.2015. After exchange of drawings, consensus was reached with respect to the plan only on 06.02.2016. It is admitted by the respondents that there was a delay on their part in finalizing the plan.

(iii) The applicant prepared a draft Power of Attorney, in terms of the JDA and sent it to the respondents in February 2016, but it was kept pending without signing by the respondents. Even in the e-mail dated 23.05.2016, the respondents raised certain queries with respect to the same and the Supplemental Agreement, but not chosen to sign the same.

(iv) It is the claim of the applicant that since it had spent huge sums of money, time and energy for the

Project, without precipitating the matter, it was waiting reply from the respondents for more than an year, since there were no communication with the respondents after September, 2016. Since there is no response from them, it sent an e-mail dated 01.03.2018 requesting the respondents to extend co-operation to take the project forward. The respondents sent a reply dated 05.03.2018 making certain allegations against the applicant and claimed that they have terminated the JDA. It is stated by the respondents therein that they were at liberty to enter/engage any other builder to make their own arrangements for the development of the property.

(v) The applicant claimed that it had always been ready and willing to discharge its obligations, but it is only the respondents failed to finalize the plans and execute the Power of Attorney, which stalled the project. Hence, the alleged termination of the JDA is an unilateral termination, which has no legs to stand.

(vi) In such circumstances, as per clause 51 of the JDA, which provides for resolution disputes through the arbitration, the applicant sent a notice dated 21.03.2018 calling upon the settlement of the disputes and also named their arbitrator. The respondents sent a reply notice on 17.04.2018 denying all allegations and demands of the applicant. Hence, the present application.

3. Resisting the claim of the applicant, the respondents filed a common counter affidavit, wherein, it is stated that since the JDA is an unregistered document and with effect from 01.12.2012, all the agreements relating to construction of buildings are compulsorily required to be registered, it is non-est in the eye of law and hence, inadmissible. It is also stated that they have terminated the JDA on 06.03.2018 and as such, the very JDA cannot be relied upon by the applicant for seeking appointment of an arbitrator. Hence, the respondents prayed for dismissal of this application.

4. Learned counsel for the applicant contended that the respondents unilaterally terminated the JDA without the consent of the applicant. The said termination e-mail also speaks about the intention of the respondents to entrust the construction to any other third party builder or agent of their choice. Learned counsel argued that the applicant has got every right to specifically enforce the JDA. Since, the JDA provides for resolution of disputes through arbitration, the applicant is before this Court.

5. Learned counsel for the respondents, at the outset, objected to the maintainability of the application itself contending that the JDA, which provides arbitration clause,

based on which, the instant application was filed itself is unregistered document and hence, inadmissible in evidence. It is stated that once the document is not stamped, as required under Section 35 of the Stamp Act, it cannot be acted upon and the clauses contained therein also cannot be looked into. Hence, the arbitration clause contained in the JDA cannot be invoked by the applicant. In support of his contention, learned counsel relied the judgment of the Apex Court in **SMS Tea Estates Private Limited V. Chandmari Tea Company Private Limited, (2011) 14 SCC 66**. Paragraphs 21 and 22.2 of the said judgment are usefully extracted hereinbelow :

"21. Therefore, when a lease deed or any other instrument is relied upon as contending the arbitration agreement, the court should consider at the outset, whether an objection in that behalf is raised or not, whether the document is properly stamped. If it comes to the conclusion that it is not properly stamped, it should be impounded and dealt with in the manner specified in Section 38 of the Stamp Act. The court cannot act upon such a document or the arbitration clause therein. But if the deficit duty and penalty is paid in the manner set out in Section 35 or Section 40 of the Stamp Act, the document can be acted upon or admitted in evidence.

** * **

22.2. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars

the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Section 35 and 38 of the Stamp Act."

5.1. It is admitted by the learned counsel for the respondents that after the termination of the JDA, the applicant can claim damages, if any.

6. Heard both sides.

7. The undisputed fact remains the JDA contains an arbitration clause for resolution of disputes. Both the counsels, after making their respective submissions, agreed that since there is an arbitration clause, the arbitrality of the disputes may be decided by the Arbitrator appointed by this Court. It was also stated that the applicant is taking steps to file a petition for appointment of Arbitrator invoking Section 11 of the Arbitration and Conciliation Act, 1996.

8. In these circumstances, this Court is inclined to refer the disputes to an Arbitral Tribunal. The objection raised by the respondents with respect to the admissibility of the document and the jurisdiction of the Arbitrator,

etc., could be agitated before the Arbitral Tribunal uninfluenced by any of the observations made in this order.

9. Thus, this Court appoints Hon'ble Mr. Justice K. Mohanram, a retired Judge of this Court, residing at No. 3, Sivakamipuram, II Cross Street, Thiruvannamiyur, Chennai-600 041, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

10. The Original application is, accordingly, disposed of.

Sd/ .P.S.N.J
12.07.2018

//Certified to be a true copy//
Dated this the day of 2018

jj 27.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.