

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2286 OF 2017
AND CMP NO.10773 OF 2017

Kavitha Rajagopal

... Petitioner

Vs.

M/s.Manju Foundations Pvt. Ltd.,
Rep. by its Managing Director
K.M.Vidyasagar S/o.Madivadan
Pioneer Agnitia Park
East Wing, 7th Floor,
No.141, Kandanchavadi, OMR,
Chennai - 600 096.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in M.P.No.1 of 2017 in A.C.P.No.2 of 2017 on the file of the Sole Arbitrator / Arbitral Tribunal, dated 24.06.2017.

For Petitioner : Mr.G.Jehanathan
For Respondent : Mr.V.Sivalinkam

ORDER

This Civil Revision Petition is directed against the order dated 24.06.2017 passed by the Sole Arbitrator / Arbitral Tribunal, under Section 16(2) and (3) of the Arbitration and Conciliation Act, 1996.

2. According to the revision petitioner, she had entered into two agreements with respect to purchase of the property. The revision petitioner is the purchaser and the respondent is the promoter. One agreement is a tripartite promoter agreement between the vendor of the land, promoter of the project and the purchaser. The other agreement is a bipartite construction agreement, wherein the petitioner and the respondent are parties. In both the agreements, there is an arbitration clause. In view of the dispute arose between the parties, the respondent has raised an arbitration dispute for non-payment and recovery of construction costs, by appointing an Arbitrator, as per Clause 15 of the agreement of the construction of the building.

3. The petitioner filed an application before the Sole Arbitrator to decide the issue of jurisdiction under Section 16(2) and (3) of

the Arbitration and Conciliation Act, 1996. According to the petitioner, the Arbitrator has no jurisdiction to decide the issue in view of clause 4(ix) of the agreement of the promoter dated 17.10.2014. As per the said clause of the promoter's agreement, it is the first party to the promoter's agreement, namely, the vendor has power to appoint an Arbitrator and the respondent has no power to do so. Therefore, the Arbitral Tribunal, as such, is *corum non judice* and the proceedings are illegal.

4. Before the Arbitral Tribunal, the respondent contended that the arbitration is raised out of a dispute on violation of terms and conditions of the construction agreement between the petitioner and the respondent and it has nothing to do with the promoter's agreement. The Arbitrator has dismissed the application filed by the petitioner on the ground that she had voluntarily submitted herself to the clauses construction agreement and as long as the arbitration clause exists between the parties, the dispute can be referred to an Arbitrator and the Arbitrator is empowered to conduct arbitration. More so, there is no objection raised by the petitioner after receipt of the notice issued by the Arbitrator.

5. I have given my careful consideration to the grounds raised in the Civil Revision Petition.

6. Admittedly, there are two agreements. The present dispute arose out of the arbitration clause contained in the construction agreement. As per the construction agreement, the respondent is empowered to appoint the Sole Arbitrator and there is no ambiguity regarding the same. The claim of the petitioner that arbitration shall be raised only under the promoter's agreement, is not sustainable. If at all the petitioner has any grievance, with regard to the non-execution of the sale deed, it is always open to her to raise an arbitration dispute, under the promoter's agreement. Only because both the agreements contain arbitration clause and deals with the same property, it cannot be said that one of the parties to the agreement shall be compelled to raise the dispute only under a particular agreement. Therefore, I do not find any overwhelming reason to interfere with the order passed by the Arbitral Tribunal.

7. As per Section 16(5) of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal shall decide on a plea referred to in sub-

section (2) of sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award. The party aggrieved is entitled by such an arbitral award may make an application for setting aside the arbitral award in accordance with Section 34. When an inbuilt provision is there, the Civil Revision Petition does not merit any consideration and accordingly, is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

22.03.2018

Index : Yes/No
Internet : Yes/No
TK

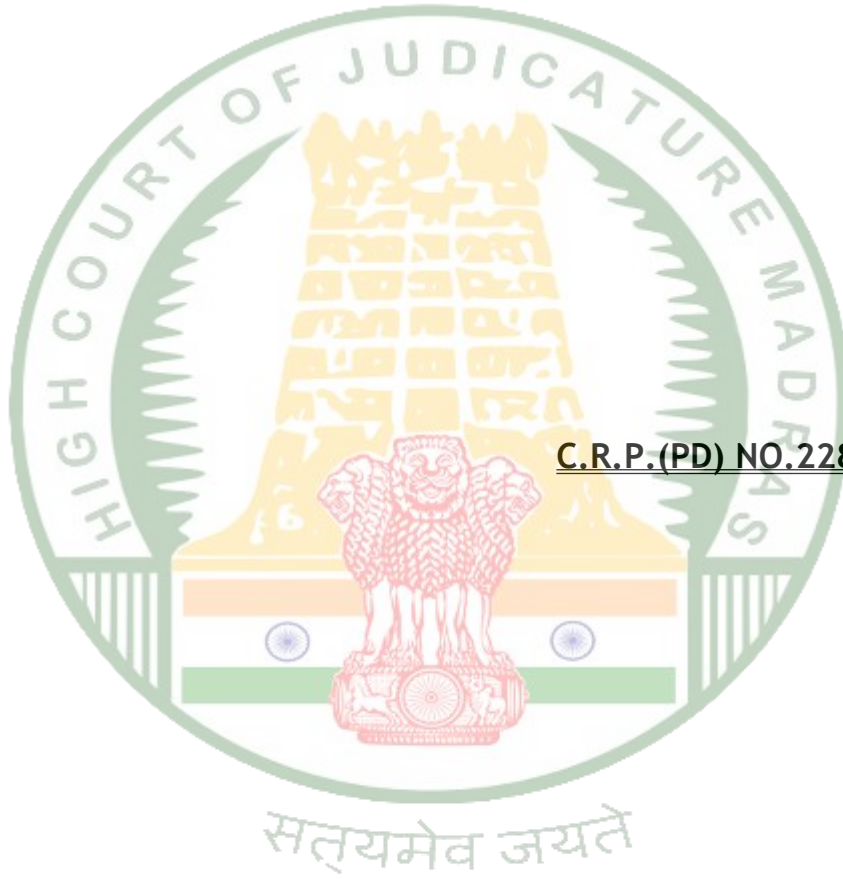
To

The Sole Arbitrator
Arbitral Tribunal
Chennai.

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M.GOVINDARAJ, J.

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