

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.5 of 2018  
and A.No.6752 of 2016

1. Dr.P.Thamilarasan  
2. Ponmudi Thamilarasan

.. Petitioners/Applicants

Vs.

D.Dhinakaran,  
Proprietor,  
Green Avenue Homes and Gardens,  
Chennai-18.

.. Respondent

\* \* \*

**Prayer in O.P.No.5 of 2018 :** Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to (a) appoint a Sole Arbitrator to arbitrate upon the disputes arising on the Development Agreement dated 04.10.2012; and (b) direct the respondent to pay the costs of the petition.

**Prayer in A.No.6752 of 2016 :** Application filed under Section 9 of the Arbitration and Conciliation Act, 1996, praying to direct the respondent to furnish security for the admitted amount of compensation of Rs.38,50,000/- (Rs.30,00,000/- interest @ 18% from the date of default, i.e., 04.02.2015 till 31.08.2016) till the disposal of arbitral proceedings.

\* \* \*

For Petitioners/ : Mr.  
Applicants For King & Patridge

For Respondents : No Appearance

**COMMON ORDER**

This Original Petition is filed seeking appointment of a Sole Arbitrator to arbitrate upon the disputes arisen between the petitioner and the respondents on the Development Agreement dated 04.10.2012.

2. The petitioners entered into a Development Agreement dated 04.10.2012 with the respondent to construct an independent house in the property owned by them within a period of 28 months, i.e., on or before 04.02.2015 and also to develop the remaining portion of the land allotted to the developer. In pursuance of the same, the petitioners also executed Power of Attorneys dated 19.10.2012 authorizing the respondent to approach the appropriate authorities for obtaining statutory approvals. Since there was a complete breach of the terms and conditions of the Development Agreement with respect to the construction of the house, meetings were held between the parties and time was extended till January, 2016 to complete the work. It is the further allegation of the petitioners that the respondent only developed the portion of the land allotted to their share and executed a number of sale deeds since 2012 without disclosing about the Development Agreement to the purchasers, but failed to develop the owner's share. Hence, a legal notice was served on the respondent on 05.10.2015, which was replied by the respondent on

22.11.2015 admitting the delay and also undertaking to complete the work and handover the possession of the house by April 2016. Since there is no progress till date, invoking Clause 35, which provides for arbitration, the petitioners sent a notice on 13.06.2016 for appointment of Mr.N.Mohandas, a retired District Judge, as the sole Arbitrator. Even to the said notice, there is no response from the respondent. Hence, the petitioners approached this Court with the present petition.

3. Learned counsel for the petitioners submitted that the respondent having received the notice dated 13.06.2016 failed to appoint the named arbitrator within the stipulated period of thirty days and hence, the petitioners seek appointment of the arbitrator as per the provision under Section 11(4)(a) of the Arbitration and Conciliation Act, 1996.

4. Notice in this petition was ordered on 17.01.2018 and as per the endorsement of the learned Master dated 21.03.2018, service vide paper publication was effected on the respondent on 07.03.2018, despite which, there is no representation on behalf of the respondent.

5. Thus, this Court appoints Mr.N.Mohandas, a Retired District Judge, No.223, New Additional Law Chambers, High Court, Chennai-600 104, 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.

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

7. Consequently, A.No.6752 of 2016 is closed, with liberty to the petitioners/applicants to approach the named Arbitrator for any appropriate relief in accordance with law.

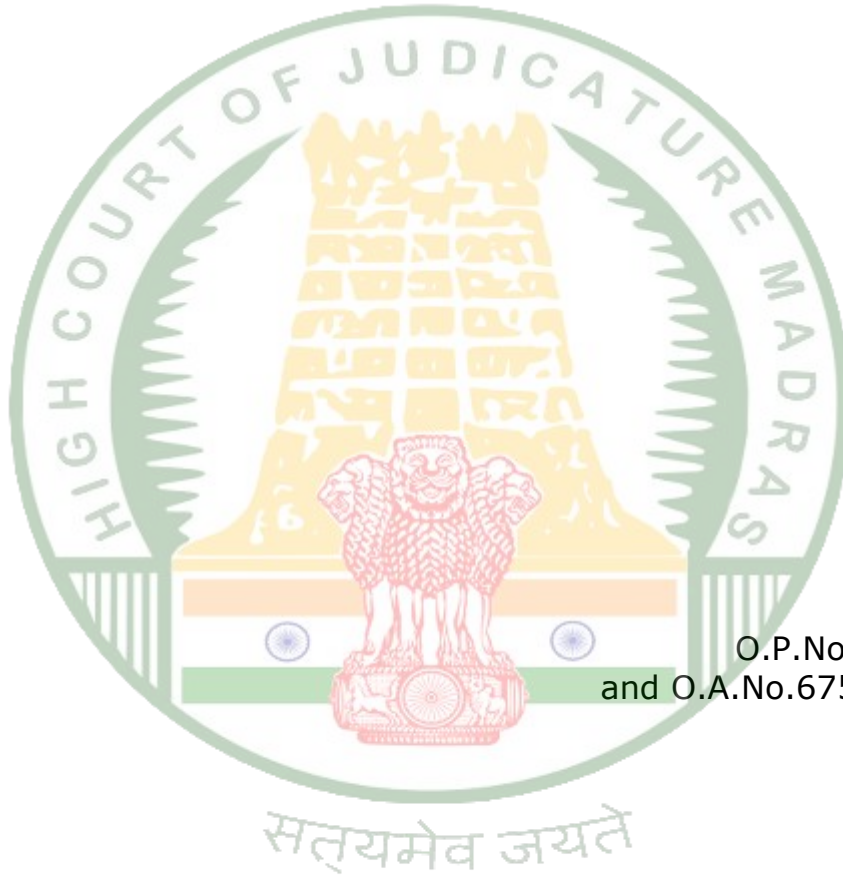
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