

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 28TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.P. No.217 of 2018

In the matter of Arbitration
Act, 1996 and section 11 of
the Arbitration & Conciliation
Act, 1996

And

In the matter of Arbitration
in terms of Clause 23(b) in
respect of Agreement dated
27.03.2010.

1.Mr.Badri Agarwal
Son of Mr.B.L.Agarwal (Late)

... Petitioner No.1

2.Mrs.Urvashi Agarwal
Wife of Mr.Badri Agarwal,
Both residing at
A-53/3A, DLF Outub Enclave,
Phase 1, Gurgaon 122 002
Haryana

... Petitioner No.2

-Versus-

1.M/s.Marg Properties Pvt.Ltd
Marg Axis, 4/318 Rajiv Gandhi Salai

Kottivakkam, Chennai- 600 041

... Respondent No.1

2.M/s.New Chennai Township Pvt.Ltd.

Marg Axis, 4/318 Rajiv Gandhi Salai

Kottivakkam, Chennai- 600 041

Also at

Seekanakuppam, Cheyyur

Kanchipuram - 603 305

Tamil Nadu

... Respondent No.2

Original Petition praying that this Hon'ble Court be pleased to appoint any competent person as the sole arbitrator to resolve the dispute between the Petitioner and the Respondents as per Clause 7 of the Agreement dated 27th March 2010.

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

This petition is filed for appointment of sole arbitrator to resolve the dispute between the petitioners and the respondents as per clause 7 of the agreement dated 27.03.2010.

2. Heard, the learned counsel on both sides.

3. The petitioners and the respondents have entered

into an unregistered agreement dated 27.03.2010, wherein certain properties were sought to be given as security for the amounts advanced by the petitioners. The said agreement also contains arbitration clause. Subsequent negotiations, culminated in two lease deeds dated 09.04.2014 and 02.06.2014 in terms of which certain properties have been assigned to the petitioners herein. However, the petitioners have raised a dispute and had demanded amounts vide their letter dated 19.02.2015. Petitioner originally sent a legal notice on 01.09.2017. Thereafter, issued another notice on 01.12.2017 to the respondents for appointment of Arbitrator as per the procedure laid down in the agreement. However, respondents have not responded. Hence, this petition has been filed.

4. Learned counsel for the respondent submits that there is nothing to be settled through arbitration as the claims of the petitioner has been settled.

5. In terms of the decision of the Hon'ble Supreme Court in ***Duro Felguera, S.A. vs. Gangavaram Port Ltd.***, (2017) 9 SCC 729: 2017 SCC OnLine SC 1233 : (2017) 6 CTC 417(SC): AIR 2017 SC 5070 this Court is not required to get

into the merits of the dispute. The Court has to merely see, whether there is an appropriate clause in the agreement for arbitration. The Court further held that the legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.

6. The agreement and the two lease deeds, which have been filed by either of the parties indicate existence of their arbitration clause. Therefore, the above petition deserves to be allowed.

7. Hence, Hon'ble Mr. Justice P. Shanmugam, retired Judge of this Court, residing at Plot No. 47, Olive Avenue, Injambakkam, Chennai 600 115 is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

8. He 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.

9. 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 Petition is, accordingly, allowed, leaving the parties to bear their own costs.

Sd/-C.S.N.J

28/09/2018

//Certified to be a true copy//

Dated this the day of 2018

JJ 26.11.2018

सत्यमेव जयते

COURT OFFICER

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

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