

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION NO.11 OF 2017

ORDER:

This application is filed, under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator. The applicant is the owner of a flat in "My Home Navadweepa Apartments". The memorandum and byelaws, of "My Home Navadweepa Apartments Owners Welfare Association", stipulates, in Clause 22, that, in the event any disputes arise among the Members, or Members and the Association, such disputes shall, as far as possible, be settled in an amicable manner; if the same is not possible, it shall be referred for redressal to the arbitrator; the award of the arbitrator shall be final and binding; the arbitration proceedings shall be initiated, carried out and concluded as per the provisions of the Arbitration and Conciliation Act, 1996; and the place of arbitration shall be at Hyderabad. The applicant, on his own, appointed an arbitrator who initiated arbitral proceedings. Since the respondent did not agree to such arbitration, the applicant has invoked the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act.

The dispute between the parties appears to relate to enhancement of monthly maintenance charges. On the ground that the applicant had failed to make payment of the monthly maintenance charges, certain facilities extended to him, as a member of the association, were discontinued. This resulted in his invoking the arbitration clause of the agreement. At the behest of the arbitrator, appointed by the applicant himself, the entire arrears

of monthly maintenance charges were paid by him later to the respondent, subject to arbitration proceedings.

Sri Ch. Janardhana Reddy, Learned Counsel for the respondent, would submit that, as against the total number of 555 apartment owners, 554 had agreed to the enhancement of monthly maintenance charges; the applicant alone had refused to make payment; the Association was forced to discontinue certain facilities, which are extended to the members of the association, to the applicant; the arbitration clause requires parties, in the first instance, to amicably resolve the issue, and only thereafter to have them resolved through the arbitral process; no efforts were made to mutually resolve the inter-se disputes amicably; and the applicant's claim is wholly devoid of merits.

In so far as the first contention, that the parties are required to resolve their disputes amicably, the very fact that the applicant had perforce to invoke the arbitration clause earlier, and the respondent had chosen not to discuss and attempt to resolve the dispute with the applicant, would go to show that these disputes are incapable of mutual resolution between the parties. Sri Ch. Janardhana Reddy, Learned Counsel for the respondent, is unable to show that any useful purpose would now be served in directing parties to mutually resolve the issue. Section 11(6A) of the Arbitration and Conciliation Act, 1996, as inserted by Act 3 of 2016 with effect from 23.10.2015, stipulates that the High Court, while considering any application under sub-sections (4), (5) and (6) of Section 11 shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement. Consequently, the only question which

this Court is required to examine is whether there exists an arbitration agreement between the parties, and not dwell into the validity of the respective claims of the parties to these proceedings. As noted hereinabove, the bye-laws require the dispute, between the members of the association and the Association, to be resolved by an arbitrator. The fact that the applicant is an apartment owner, and a member of the association, is admitted. If that be so, the arbitration clause would apply; and, in the absence of the parties mutually agreeing on an arbitrator, the applicant is entitled to invoke the jurisdiction of this Court seeking appointment of an arbitrator.

I consider it appropriate, in such circumstances, to appoint Sri T. Sundera Ramaiah, Retired District Judge, F5, Bollineni Homes, Beside Hitech theatre, Madhapur, Hyderabad – 500081, R.R. District as the arbitrator to resolve the disputes which have arisen between the applicant and the respondent. The Learned arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He shall complete the arbitration proceedings, and pass an award at the earliest, preferably within a period of six months from the date of commencement of arbitral proceedings. He shall hold sittings, as far as possible, in the mediation centre of the High Court.

The Arbitration Application, is accordingly, disposed of. No costs.

RAMESH RANGANATHAN, ACJ

Date: 08.06.2018.
MRKR