

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P. No.168 of 2019

M/s.Dugar Housing Ltd.
Rep by its Manager Legal,
123, Marshalls Road, Egmore,
Chennai – 600 008.

.. Petitioner

-VS-

M/s.Sree Sankeshwara Foundations & Investments,
Rep by its Partner Mr.J.Dilip Kumar Mehta,
No.115, N.S.C. Bose Road,
Chennai.

.. Respondents

Prayer: Petition filed under Section 11(6)(C) of the Arbitration & Conciliation Act, 1996 to appoint an arbitrator and refer all the disputes arising out of Joint Development Agreement dated 16.03.2012, Supplemental Agreement dated 27.03.2012 and Memorandum of Agreement dated 16.06.2015.

For Petitioner : Mr.K.V.Bhashyamchari

For Respondent : Mr.Anirudh Krishnan

ORDER

This petition seeks to appoint an arbitrator and refer all the disputes arising out of Joint Development Agreement dated 16.03.2012, Supplemental Agreement dated 27.03.2012 and Memorandum of Agreement dated 16.06.2015.

2. This petition has been filed invoking the Memorandum of Understanding entered between the parties on 16.06.2015. The Clause 29 of the Memorandum of Understanding provides for an arbitration and the relevant portion reads as follows :

- "a. Sri.R.Subramanian, Advocate – No.85, Pantheon Road, 20 Srirangam Avenue, Egmore, Chennai – 600 008.
- b. Sri.L.Om Magesh, Advocate, No.28, Errabalu Chetty Street, 2nd Floor, Chennai – 600 001."

3. The learned counsel for the petitioner contended that there cannot be a two Arbitrators as two of them have to nominate the third umpire and that the petitioner is agreeable for the appointment of a Sole Arbitrator in this matter. The respondent has today filed an affidavit dated 04.07.2019 consenting for the appointment of a Sole Arbitrator in the present petition without prejudice to their rights. In para 3 of the affidavit, the respondent stated as follows:

"Without prejudice to the stand as set out in Paragraph 2 above, I state that the respondent is agreeable to appointment of a sole arbitrator in the present petition for resolution of disputes arising out of the Notice of Arbitration dated 11.01.2019. The respondent also reserves liberty to bring before the tribunal appointed in this petition, it's counter claims arising out of the Memorandum of Understanding dated 16.06.2015 without prejudice to the appeal pending before the Hon'ble NCLAT and any subsequent appellate proceedings."

4. In view of the above and considering the fact that the parties have agreed to appoint a sole Arbitrator, contrary to what has

been agreed by them in the MOU dated 16.06.2015, this Court is inclined to appoint Mr.R.Sankaranarayanan, Senior Advocate, having office at No.103, Law Chambers, High Court Buildings, Chennai – 600 104 (Ph: 044-28474701, Mob: 90032 99952) 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.

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

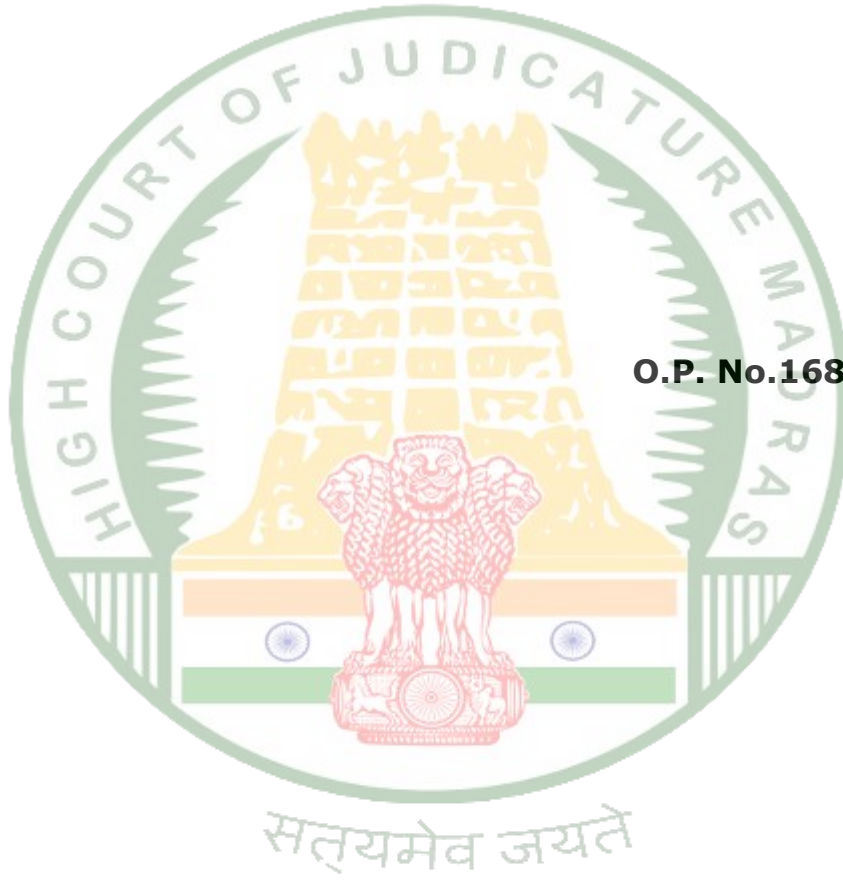
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PUSHPA SATHYANARAYANA, J.

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O.P. No.168 of 2019

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