

Application No.3163 of 2019

in

C.S.No.374 of 2018**S.VAIDYANATHAN,J.**

The 2nd Defendant in the Suit has come up with the present Application seeking to refer the dispute in this Suit to an Arbitrator in terms of Section 8 of Arbitration and Conciliation Act, 1996, r/w Section 10(3) of the Commercial Courts Act, 2015, or permit the parties herein to resolve the dispute in terms of the clause penultimate of Joint Development Agreement, dated 20.01.2016 to appoint Arbitrators by each of the parties.

2. Learned counsel for the Applicant submitted that when there is a specific clause in the Agreement of Joint Development, dated 20.01.2016, in terms of Section 10 of the Commercial Courts Act, 2015, more particularly, in the light of Section 8 of the Arbitration and Conciliation Act, the matter has to be duly resolved by an Arbitrator. That apart, he submitted that if the matter is referred to an Arbitrator in terms of Section 69-A of the Tamil Nadu Court Fees and Suits Valuation (Amendment) Act, 2007, the Applicant is entitled to refund of full court fee.

3. In reply, learned counsel appearing for the 1st Respondent/Plaintiff submitted that in the Written Statement filed by the

Applicant/2nd Defendant, no legal plea was raised with regard to appointment of an Arbitrator.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The Agreement of Joint Development, dated 20.01.2016 entered into between the parties is not in dispute. For the sake of convenience, the Arbitration clause at page 7 of the said Agreement is extracted below:

“The Landowner *and* the Builders mutually agree to extend full co-operation to each other confirming to the terms of this Agreement and for smooth and successful completion of the project within the time frame and if any misunderstanding or dispute arises between the parties, the same shall be resolved by Arbitrators appointed by each of the parties herein and only the local Courts at Chennai will have jurisdiction in case of any dispute.”

6. A reading of the above clause would make it very clear that the parties have agreed to go before the Arbitrator. The word '*and*' in the said paragraph, i.e. "*resolved by Arbitrators appointed by each of the parties herein and only the local Courts at Chennai*" cannot be read as '*or*', and

when the parties have agreed to appoint an Arbitrator clearly stating that

only the local Courts at Chennai will have jurisdiction in case of any dispute, the contention of the learned counsel appearing for the 1st Respondent/Plaintiff that when there are two forums, it is open to the Plaintiff to chose one, cannot be accepted. The fact remains that as on date, no Arbitrator has been appointed by any of the parties. The clause extracted supra refers to the seat of Arbitration.

7. Since there is a provision under Section 69-A of the Tamil Nadu Court Fees and Suits Valuation (Amendment) Act, 2007, the Applicant would certainly be entitled to refund of full court fee.

8. The Commercial Courts Act, 2015 is a general enactment and the Arbitration and Conciliation Act, 1996 is a special enactment. Hence, the Applicant need to approach only the Arbitrator, who may be appointed under the Arbitration and Conciliation Act, 1996, for the purpose of adjudication.

Accordingly, this Application is allowed.

23.04.2019

Index : Yes/No
Speaking Order : Yes/No

(aeb)

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