

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 30.04.2019
Coram

The Hon'ble Mr. Justice R. Subbiah
and
The Hon'ble Mr. Justice Krishnan Ramasamy

O.S.A.No.292 of 2018
and
C.M.P.No.13636 of 2018

M/s. Olympia Opaline Flat
Owners Association (OOOA),
rep. By its Joint Secretary Mr. Sivabaskaran Pachamal
Having its Office at Amethyst Stilt,
Olympia Opaline, Phase I, OMR, Navalur,
Chennai - 603 103.

.... Appellant

Vs.

Olympia Infratech, a Unit of Olympia Tech Park
(Chennai) Pvt. Ltd.,
Having its registered Office at 1,
SIDCO Industrial Estate,
Guindy, Chennai - 600 032.

.... Respondent

Prayer :

Appeal filed under Order XXXVI Rule 9 Original Side
Rules read with Clause 15 of the Letters Patent, against
the order dated 26.06.2018 in A.No.4431 of 2017 in
C.S.No.351 of 2017, on the original side of this Court.

For Appellant : Mr. Nithyaesh and Vaibhav

For Respondent : M/s. R. Jayaprakash and John Zachariah

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COMMON JUDGEMENT

[Order was delivered by Krishnan Ramasamy, J.,]

This Original Side Appeal has been filed by the
appellant/plaintiff challenging the order passed by the
learned Single Judge in A.No.4431 of 2017 in C.S.No.351 of
2017, dated 26.06.2018.

2. When the matter is taken up for hearing, this Court putforth a suggestion to the learned counsel for both the parties as to why can't the dispute be resolved through Arbitration by referring the matter before an Arbitrator, the learned counsel on either side have not seriously disputed for such course being adopted, and they jointly agreed that, the Hon'ble Mr. Justice K. Chandru, (Retired) may be appointed as the Sole Arbitrator to resolve the dispute. In this regard, both the learned counsel have filed affidavit/reply affidavit, indicating their consent for referring the dispute before the Arbitrator and the same are extracted herein below.

i) The affidavit filed by the respondent, dated 23.04.2019 is as follows:-

" I submit that the appellant herein filed a civil suit being C.S.No.351 of 2017 seeking the relief as follows:-

a) Judgement and decree for recovery of Rs.25,27,84,630/- along with interest at 18 % per annum in favour of the plaintiff and against the defendant.

b) Pass such other orders as this Court may deem fit in the facts and circumstances of the present case and thus render justice.

3. I submit that the respondent filed an application under section 8 of Arbitration and Conciliation Act, in the said C.S.No.351 of 2017 and contended inter alia that all the disputes before this Court undeniably arise out of the agreements for construction that were signed and executed by and between the respondent Company and the individual flat owners respectively. I submit that the individual flat owners and the respondent company agreed to settle all the disputes between them through arbitration and one of the clauses in

the said agreement for construction with the Flat Owners has the arbitration clause. Accordingly, the respondent contended that the disputes cannot be decided in the aforesaid suit.

4. The said application under Section 8 of the Arbitration Act was heard and the Hon'ble Single Judge considered the contentions of the respondent and was pleased to allow the said application. I submit that, aggrieved by the said order dated 26.06.2018, the appellant herein preferred an OSA. I further submit that this respondent has very good and valid points in defence to the claims made by the appellant.

5. However, in order to achieve a swift resolution of the dispute between the parties, this affidavit is being filed before this Court by the respondent, without prejudice to any of its rights and contentions in the pending disputes in the aforesaid suit No.351 of 2017 and O.S.A.No.292 of 2018.

6. The respondent most humbly submits before this Court that it may be pleased to refer all the disputes and differences between the parties to arbitration with a direction that all the rights and contentions by and between the parties in the pending disputes be adjudicated upon by the arbitrator and to pass such further orders as this Court may deem fit."

ii) The affidavit filed by the appellant, dated 30.04.2019 is as follows:-

" I state that I am the authorization signatory of the appellant association herein and as such I am well acquainted with the facts and circumstances of the present case and I am authorized and competent

to depose thereto on behalf of the appellant association to this affidavit filed in response to the affidavit filed by the respondent-developer dated 23.04.2019 submitted in court by them during the hearing on 24.04.2019.

2. I respectfully submit that when the above case came up hearing before this Court on 24.04.2019, the respondent herein had filed their affidavit and the same as follows:-

" The respondent most humbly submits before this Court that it may be pleased to refer all the disputes and differences between the parties to arbitration with a direction that all the rights and contentions by and between the parties in the pending disputes be adjudicated upon by the arbitrator and to pass such further orders as this Court may deem fit."

Therefore, the present appeal may be disposed of on the following terms arrived at between the parties.

3. Pursuant to the hearing in the present matter before this Court on 24.04.2019 both the parties mutually agreed and provide their consent for arbitration as the mode of adjudication and resolution of the disputes between themselves.

4. During the hearing on 24.04.2019, the respondent-developer had suggested the name of Justice K.Chandru, the retired judge of this Court and therefore, the Hon'ble Mr.Justice K.Chandru (Retd.) may be appointed as sole arbitrator to adjudicate the disputes between both the parties.

5. Both parties have unanimously agreed that arbitration would be the

method of resolving and adjudicating all their disputes, contentions, claims, counter claims, and liabilities between themselves, and that, the sole arbitrator Hon'ble Justice K.Chandru (Retd.) would have complete and absolute jurisdiction to adjudicate on all the disputes, contentions, claims, counter claims and liabilities between the parties.

6. Both the parties have agreed that the appellant association herein shall have the right to file any claim/all claims against the respondent developer and that the respondent developer shall have the right to file any counter - claim/all counter-claim against the appellant-association, as the case may be.

Therefore, in the light of the above, it is humbly prayed that this Court may be pleased to take on record the present reply affidavit giving consent and pass appropriate orders.""

3. In view of the above, we appoint the Hon'ble Mr. Justice K.Chandru, (Retired) as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of communication of the order. As requested, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre. The Arbitrator is at liberty to fix his remuneration.

4. This Original Side Appeal is disposed of. Office is directed to refund the Court fee paid by the appellant, as they are entitled to it. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sd

To

1.THE SUB ASSISTANT REGISTRAR, (ORIGINAL SIDE)
HIGH COURT MADRAS

2.MR.K.CHANDRU, (RETD) JUDGE,
HIGH COURT MADRAS
NO.4-B ,KANCHANA
78,ST,MARRYS ROAD,
ABIRAMAPURAM,CHENNAI 18

+1cc to M/s.fox mandal associates , Advocate SR.No. 42289

O.S.A.No.292 of 2018

A.SK(21/06/2019)



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