

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.439 of 2019

M/s.UNITTAS MULTI SPECIALITY
HOSPITAL PRIVATE LIMITED

Rep. By its Director

Mr.Balu

Regd. Office at New No.16 (Old No.17)

M.K.Reddy Street, West Tambaram

Chennai - 600 045

... Petitioner

VS.

Dr.Karthik

... Respondent

Original Petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, for appointing a retired High Court Judge as Sole Arbitrator as this Court fit and proper to arbitrate the dispute that has arisen between the parties.

For Petitioner : Mr.S.V.Jayaraman
Senior counsel
for Mr.P.Arivudainambi

For Respondents : Mr.S.Arivazhagan
Counsel for Defendant

ORDER

Mr.S.V.Jayaraman, learned senior counsel instructed by counsel on record Mr.Arivudainambi and Mr.S.Arivazhagan, learned counsel on record for sole respondent are before this Court.

2. Instant petition has been filed under Sub-section (5) of Section 11 of 'The Arbitration and Conciliation Act, 1996' ('A & C Act' for brevity). Learned senior counsel for petitioner very fairly submits that this may be a fit case for a petition under Section Sub-section (6) of Section 11 of A & C Act.

3. Be that as it may, it may not be necessary to dilate further on these aspects of the matter owing to the nature of the arbitration agreement between the parties i.e., petitioner and respondent. Arbitration agreement, being an Arbitration Agreement within the meaning of Section 7 of A & C Act between the parties, is in the form of a covenant/clause in a document dated 20.08.2018. The relevant clause i.e., Clause 25(b) reads as follows:

' 25(b). Disputes between the parties in connection with or arising out of the agreement, which the parties are unable to amicably resolve between themselves shall be referred to mediation to be held under the auspices of the Mediation and Conciliation Centre in the Madras High Court. If the parties are not able to resolve the dispute in

question by mediation, the dispute shall finally be settled by arbitration by sole arbitrator, who shall be Retd. High Court Judge, to be appointed mutually by both parties in accordance with the Indian Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English and the place of arbitration shall be Chennai. Arbitration shall be held in Chennai, India subject to the jurisdiction of the High Court in Madras and the total costs/expense including arbitrator fees shall be borne equally by the both parties hereto.'

4. A perusal of the Arbitration Agreement between the parties , which is in the form of a covenant, brings to light that it is a structured / step ladder arbitration. Being a step ladder arbitration, it is necessary that the parties should first approach 'Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court' ('TNMCC' for brevity) and only in the event of failure of conciliation before TNMCC, the question of appointment of an Arbitrator will arise. The exchange of notices between the petitioner and the respondent regarding invocation of the arbitration agreement are 07.05.2019 and 20.05.2019 respectively i.e., 07.05.2019 is the notice from the petitioner and 20.05.2019 is the reply from the respondent. A perusal of the two reveal that both parties have proceeded on the basis that there would be an appointment of Arbitrator directly, whereas the arbitration clause provides for the matter to be placed before TNMCC, as first step in the step ladder arbitration clause

5. Faced with the above situation, learned counsel for both sides submitted that they will go before TNMCC and attempt a amicable resolution of the dispute.

6. Be that as it may, if the proceedings before TNMCC do not culminate in a happy ending or an amicable resolution, a request is made that the petitioner's right to file a fresh petition under Section 11 may please be preserved. This request is acceded to.

7. Registry is directed to place this matter before TNMCC on 20.12.2019 at 03.00pm. Both the learned counsel submit that the parties concerned will be present before TNMCC on 20.12.2019 at 03.00pm without insisting on a separate hearing notice. In other words, 20.12.2019 at 03.00 pm will be the first session before TNMCC. TNMCC is requested to conclude the proceedings as expeditiously as possible and in any event on or before 20.01.2019.

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This original petition is disposed of preserving the rights of the petitioner in the aforesaid manner. No costs. Consequently, connected miscellaneous petitions are closed.

10.12.2019

Speaking order: Yes/No

Index: Yes/No

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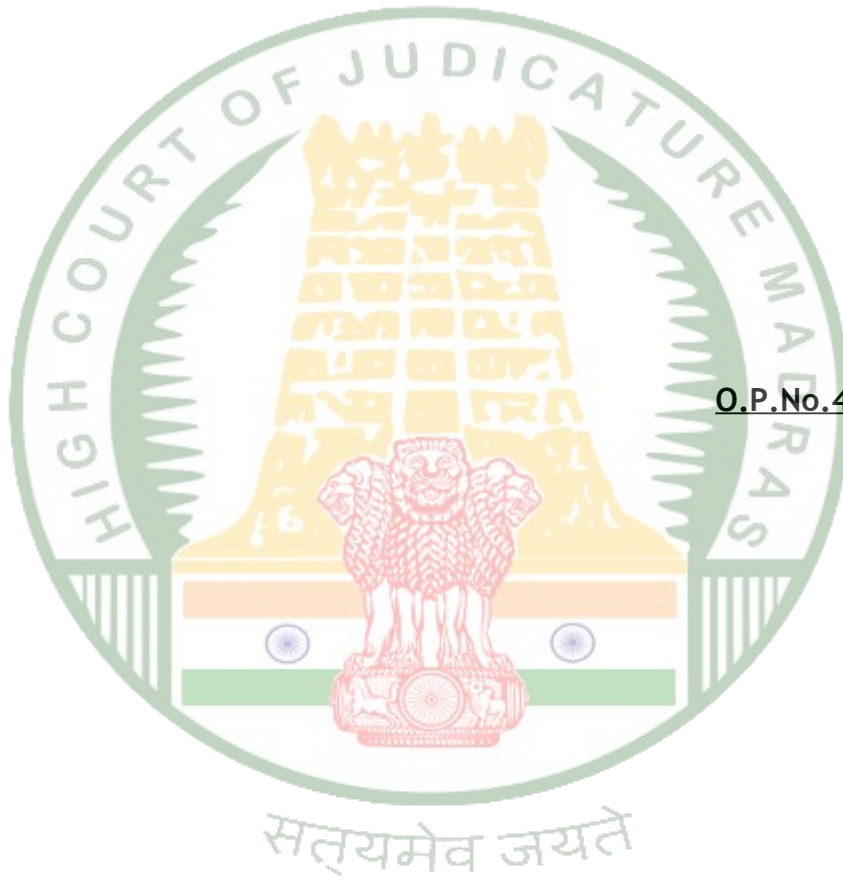


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