

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.554 of 2019

M/s.Colour Castle Owners Society
rep. by its Secretary N.Murugesan
Nookampalayam,
Kamarajar Street,
Perumbakkam,
Chennai-600 100.

.. Petitioner

Vs.

M/s.Colour Homes Developers Pvt. Ltd.,
rep. by its Managing Director,
No.37, 6th Street, 'A' Block,
Anna Nagar (East),
Chennai-600 102.

.. Respondent

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Prayer : Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to decide the disputes that have arisen between the petitioner and the respondent under the Construction Agreement dated 15.03.2014.

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For Petitioner : Ms.Dakshayani Reddy

For Respondent : Mr.M.Anandaraj

ORDER

This Original Petition is filed seeking for the appointment of a Sole Arbitrator to decide the disputes that have arisen between the

petitioner and the respondent under the Construction Agreement dated 15.03.2014.

2. According to the petitioner, it is a registered Society under the provisions of the Tamil Nadu Societies Registration Act read with the Tamil Nadu Apartment Ownership Act, 1994 and its members, numbering 92, are the purchasers of the flats developed by the respondent after entering into individual Construction Agreements. As per the said agreements, the respondent has duty bound to do maintenance for one year, which came to an end during September 2017, and thereafter it has to handover the corpus fund, which the respondent collected at the rate of Rs.20,000/- from each apartment, to the petitioner society. Thus, the respondent is liable to pay a sum of Rs.20,00,000/- (Rupees twenty lakhs only) to the petitioner. However, the respondent, while admitting the said liability, requested the petitioner to permit it to pay the due amount in 18 equal monthly installments of Rs.1,00,000/-, i.e., Rs.18,00,000/- for which, the petitioner also expressed consent to avoid any litigation. However, the respondent only paid a sum of Rs.2,00,000/- (Rupees two lakhs only), of which, last installment was made on 20.04.2018. Thus, the outstanding now mounted to Rs.21,00,000/- (Rupees twenty one lakhs only).

3. Besides the above, the petitioner Society made so many allegations with respect to the quality of construction, not fulfilling the promises like provisioning of so many amenities, illegally re-connecting electricity line for sewerage treatment plant, which necessitated the petitioner to pay fine of Rs.3,35,716/- to the Tamil Nadu Electricity Board, constructing and selling eight more flats in the common land already earmarked for and owned by all the 92 owners, etc., Thus, according to the petitioner, it invoked arbitration clause (clause 13) of the Construction Agreement and sent a legal notice dated 04.04.2019 nominating an Arbitrator, which was responded to by the respondent on 21.05.2019 with untenable grounds necessitating the petitioner to invoke Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, "the Act") to file this petition seeking the aforesaid prayer.

4. Countering the allegations as false, frivolous, baseless and incorrect, the respondent filed a counter-affidavit dated 12.09.2019. It is stated by the respondent that it fulfilled all the obligations and after adjusting the corpus fund towards the subscription to be paid by the users of the gym and rent collected by the society for the use of the supermarket, in terms of the Construction Agreement, paid the balance sum of Rs.3,00,000/- to the petitioner society. It is also

stated that out of 100 flat owners, only 53 members were authorized the petitioner to file this petition and as such the same is not maintainable.

6. Heard the learned counsel for the petitioner and the counter-submissions made by the learned counsel for the respondent and perused the materials placed before this Court.

7. The existence of an arbitration agreement is not disputed by the learned counsel for the respondent. His only contention is that it is not open to the petitioner to invoke the said clause at this stage after the expiry of the maintenance obligation cast upon it, that too, when the respondent fulfilled all their obligations during the subsistence of the Construction Agreement.

8. It is to be stated that the Hon'ble Apex Court in the judgment in **Duro Felguera S.A. Vs. Gangavaram Port Limited, (2017) 9 SCC 729**, held as follows :

"59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267]. This position continued till the amendment brought about in 2015. After the amendment,

all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

Therefore, this Court need not venture into the submissions of the learned counsel for the respondent, as admittedly, there is an arbitration clause in existence between the parties.

9. Accordingly, this Court appoints Mr.S.Rajasekar, Advocate, having office at No.T-58B, 29, 2nd Cross Street, Besant Nagar, Chennai-600 090 (Phone No.044-2491 4161 and 044-24911819) 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 shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

PUSHPA SATHYANARAYANA, J.

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10. The Original Petition is ordered accordingly. The parties shall bear their own costs.

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Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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