

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.682 of 2019

1. P.Sunilkumar
2. Resmi Sunilkumar

.. Petitioners

Vs.

M/s.GREEN PEACE CONSTRUCTIONS (P) LTD.,
rep. by its Managing Director, Mr.P.R.Earnarst,
Flat No.2 D, 2nd Floor, Plot Nos.9 to 11,
Pasupathy Street, Kothari Nagar,
Chennai-600 089.

.. Respondent

* * *

Prayer : Petition filed under Section 11(6) read with Section 14(1)(a) and (b) and Section 15(1)(a) and 15(2) of the Arbitration and Conciliation Act, 1996, praying to (a) appoint a Sole Arbitrator as substitute Arbitrator in the place of the erstwhile Arbitrator appointed by this Hon'ble Court to proceed with the Arbitration and thereby render justice ; and (b) to direct the Arbitrator so appointed to commence the Arbitral Proceedings from the stage the proceedings had reached before the erstwhile Arbitral Tribunal.

* * *

For Petitioners : Mr.A.Neelakantan

For Respondent : Mr.R.Sivamourthy

ORDER

the petitioner instituted this petition under Section 11(6) read with Section 14(1)(a) and (b) and Section 15(1)(a) and 15(2) of the

Arbitration and Conciliation Act, 1996 (in short, "the Act"). The prayer made is to appoint a Sole Arbitrator as substitute Arbitrator in the place of the erstwhile Arbitrator appointed by this Court and to direct the Arbitrator so appointed to commence the Arbitral Proceedings from the stage the proceedings had reached before the erstwhile Arbitral Tribunal.

2. The petitioners and the respondent entered into a Builder's Agreement dated 09.09.2011 (in short, "the Agreement") for purchasing a flat. Clause 4(i) of the Agreement contemplates 22 months for completion of the construction. Clause 20 enables the flat owners to cancel the booking and to seek for refund, which would be made with conditions and Clause 23 provides for settlement of dispute or difference by means of arbitration.

3. The petitioners, *inter alia*, claimed that they had parted with their hard-earned money of Rs.50,00,000/- as booking advance, the respondent neither shown the progress in the construction nor approval of the competent authorities for the construction of the fourth floor, wherein, the petitioners booked their flat, i.e. Flat No.4G. Hence, after 5 years from the date of the Agreement, the petitioner sent a letter dated 12.10.2016 cancelling the booking and sought for

refund of the booking amount with interest, besides reserving their right to seek for compensation for mental agony. Since there was no response, they invoked the arbitration clause via notice dated 21.12.2016. The respondent failed to respond to this notice also.

4. In such circumstances, the petitioners filed O.P.No.463 of 2017 before this Court under Section 11(6) of the Act seeking appointment of an Arbitrator. The respondent, upon notice, appeared before this Court and filed a counter resisting the prayer. This Court referred the parties for mediation in vain. Hence, on 14.12.2017, Mr.K.S.Venkatachalam, a retired District Judge, was appointed as the Sole Arbitrator.

5. The Arbitrator sent a letter dated 30.01.2018 to the parties fixing the first hearing on 16.02.2018, wherein, the time schedule for filing claim petition and counter were fixed. The Arbitrator continued the proceedings till 13.06.2019, during which course, chief examination by way of affidavit and cross-examination of C.W.1 was completed and R.W.1 was cross-examined in part, and fixed the next hearing on 02.07.2019. It is stated that in the interregnum, owing to the orders passed by the NCLT, Chennai Bench, declaring moratorium against the respondent in another case, the proceedings could not be

taken up for six months and after the moratorium period, on 07.05.2019, the proceedings resumed and the parties mutually consented for extending the period of arbitration by six months.

6. On 01.07.2019, the parties were informed that the hearing had to be postponed and subsequently, they had been given a copy of the letter dated 01.07.2019 sent by the Arbitrator to the Registrar of this Court seeking to relieve him from the arbitration owing to his health ground. Thus, after intimating the respondent about the intention to file this petition vide letter dated 29.07.2019, the petitioner is before this Court.

7. Heard the learned counsel on either side and perused the materials placed before this Court.

8. Admittedly, pursuant to the appointment by this Court, the Arbitrator commenced and continued the proceedings till 13.06.2019 and in such proceedings, chief and cross-examination of C.W.1 was completed and R.W.1 was cross-examined in part. The next hearing was scheduled on 02.07.2019. At this stage, the Arbitrator addressed the Registrar of this Court seeking to relieve him from the arbitration owing to his health ground.

9. Learned counsel for the parties submitted that the parties agreed for substitution of a retired District Judge in the place of the present Arbitrator and to proceed with the arbitration proceedings before the substituted Arbitrator from the stage, where it was left by the erstwhile arbitrator. It is submitted that because of the order of the NCLT, the proceedings could not be taken up for six months and hence, mandate could not be completed in time. Thus, they sought for extension of period of the mandate to the substituted arbitrator.

10. Considering the submissions of the parties, this Court, in terms of Sections 14 and 15 of the Act, inclined to substitute Hon'ble Mr.Justice N.Authinathan, a retired Judge of this Court, having office at No.37, A-Block, Lakshmi Nivas, Marshalls Road, Chennai-600 008, (Phone No.044-2461 5170), as the Sole Arbitrator, in the place of Mr.K.S.Venkatachalam and direct the substituted Arbitrator to enter upon reference and adjudicate the disputes inter se the parties from the stage, where it was left by the erstwhile Arbitrator. The substituted 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.

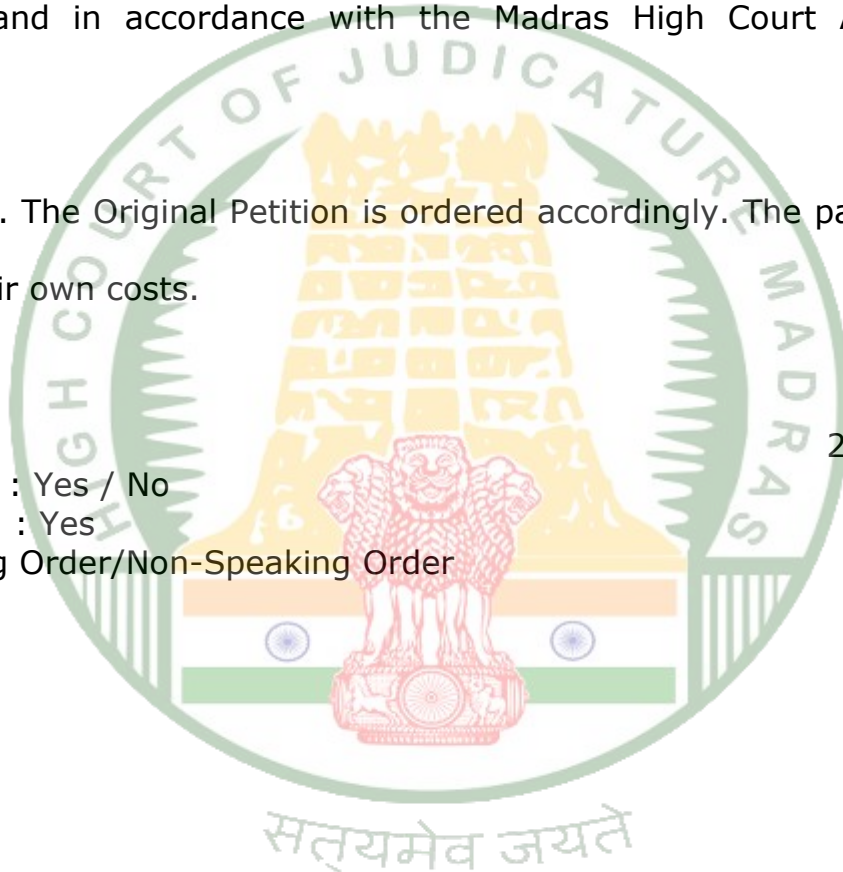
PUSHPA SATHYANARAYANA, J.

The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. As stated in the earlier order, the proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

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

26.09.2019

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