

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.676 of 2019

M/s.Selva Madhu Infrass LLP.
Rep. By its Designated Partner
Mr.R.R.Sathyamurthy,
Sakthi Mahal,
63, Perundurai Road,
Erode-638 011.

.. Petitioner

Vs.

K.Nalliappan

.. Respondent

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator in respect of the disputes between the petitioner and the respondent.

* * *

For Petitioner : Mr.V.P.Sengottuvel

For Respondent : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.S.Mohana Sundararajan

ORDER

The petitioner has filed this Original Petition seeking for appointment of an Arbitrator to adjudicate the disputes with the respondent.

2. According to the petitioner, during March 2016, the respondent approached it for construction of a Kalyana Mandapam, for which it gave a quotation on 07.04.2016 through its parent company basing it on the rates prevailing at that time, which includes VAT, but excluding Service Tax, which has to be borne by the respondent. Consequently, the petitioner submitted final rates on 24.05.2016, after adding a few additional items for roofing work. After negotiation, a Construction Agreement dated 11.07.2016 was entered into and based on the agreed payment terms, which was recorded in Clause 2.7., the petitioner offered a rebate of 4% on the rates quoted. A consultant was appointed and based on the designs and drawings, which was approved by the respondent, the construction has to take place.

3. The petitioner intended to commence the work on 11.07.2016, which has to be completed in 21 months, i.e., on 10.04.2018. However, since there was a delay in furnishing the foundation drawings, the work was actually commenced only on 17.08.2016. Even thereafter, there were delay in furnishing the drawings. Though the respondent initially accepted to supply power and water at free of cost, failed to comply with the said promise and agreed to reimburse the cost in the running bills. The petitioner maintained utmost quality and brands as per the specifications, which

were regularly monitored by the Project Engineer, Site Engineer and a Supervisor appointed for full time by the respondent, besides the respondent himself personally inspecting the site frequently and they were satisfied with the work.

4. Though the respondent committed so many breaches, he sent a legal notice dated 24.12.2018 raising unwarranted allegations against the petitioner, which was replied to by the petitioner vide its reply notice dated 15.04.2019 raising a claim of Rs.9,44,00,775/-. But the respondent has chosen not to reply. Thus, the petitioner invoked arbitration clause 5.3. of the Agreement and appointed a named Arbitrator in its notice dated 22.05.2019. However, the respondent sought time in his letter dated 24.06.2019 to appoint an Arbitrator. Even after the expiry of the time sought for, the respondent failed to nominate his Arbitrator. Hence, the petitioner is before this Court in this petition.

5. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the respondent, who have agreed upon the appointment of Hon'ble Mr.Justice K.N.Basha, a retired Judge of this Court as the Sole Arbitrator.

PUSHPA SATHYANARAYANA, J.

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6. Considering the submissions of the learned counsel for the petitioner, Mr.K.N.BASHA, a retired Judge of this Court, is appointed 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. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

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

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23.10.2019

Index : Yes / No

Internet : Yes

Speaking Order/Non-Speaking Order

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