

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.831 of 2019

V.Arun Prasad,
Partner, M/s.Sai Shanthi Homes,
No.82, Appaswamy Street,
6th Avenue, Harrington Road,
Chetpet, Chennai-600 031. .. Petitioner

Vs.

1. M/s.Sai Shanthi Homes,
rep. by its Managing Partner,
Mr.J.Sai Prasad Reddy
2. J.Sai Prasad Reddy,
Managing Partner,
M/s.Sai Shanthi Homes.
3. Ms.Sree Latha,
Partner, M/s.Sai Shanthi Homes.

All having office at
"Maharani Apartment",
No.G-4 and G-G5, Ground Floor,
Burkit Road, T.Nagar,
Chennai-600 017.

... Respondents

* * *

Prayer : Petition filed under Order XVI Rule 8 of the Original Side Rules read with Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint the third Arbitrator who shall preside over the arbitral proceedings to resolve the disputes between the parties as per clause 15 of the Partnership Deed dated 13.12.2010.

* * *

For Petitioner : Mr.A.Shamsudeen Raja

For Respondents : Mr.M.R.Ravikumar

ORDER

The petitioner has filed this petition seeking for appointment of the Presiding Arbitrator to resolve the disputes between the parties as per clause 15 of the Partnership Deed dated 13.12.2010.

2. The second respondent is known to the petitioner from the year 2005, when he joined a builder firm, as Project Engineer, wherein, the second respondent was a partner. When the said firm was dissolved in the year 2008, the petitioner joined the firm started by the second respondent as its partner. Thereafter, the petitioner was inducted as partner in the first respondent firm started by the second respondent in the year 2010 along with third respondent. The partnership deed dated 13.10.2010 was entered into between the parties. Even before that, a Joint Venture Agreement dated 09.10.2010 (JV) was entered into by the first respondent firm with one Mr.H.Abdul Kareem for developing his land. The petitioner was instrumental in obtaining necessary permission from statutory authorities and was also in-charge of the day-to-day activities. Though the petitioner was paid Rs.25,000/- as salary, he was waiting

for his share in the project without any murmur. But the first respondent firm stopped paying salary to him from July 2017 citing financial constraint. Even thereafter, the petitioner was actively participated in the construction activities. But according to the petitioner, the respondents, in order to grab the firm, had started to exert pressure on him to expel him voluntarily from the business. From 18.06.2019, the petitioner was prevented completely from entering into the project site.

3. According to the petitioner, the respondents started to execute the project with some fictitious name to deny the petitioner his rightful share. Since his efforts to resolve the dispute amicably proved futile, a notice dated 18.06.2019 was issued through his counsel demanding his share, which was replied to by the respondents on 24.06.2019 with false averments. Thus, the petitioner sent Section 21 notice on 16.08.2019 to all the respondents in terms of clause 15 of the Partnership Deed nominating an Advocate as his nominee arbitrator. However, the second respondent alone sent a reply notice dated 11.09.2019 nominating an Arbitrator and there is no reply received neither from the third respondent nor on behalf of the first respondent firm. Hence, this petition is filed by the petitioner.

4. Learned counsel on either side submitted that though the Partnership Deed provides for three-members Arbitral Tribunal and they have made their nominations, they are ready to go before a Sole Arbitrator appointed by this Court.

5. Considering the submissions of the learned counsels on either side, Mr.S.Venkatesan, Advocate, having office at No.24, III Avenue, Indira Nagar, Adyar, Chennai-600 020, (Phone No.98410 41367), 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 appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

6. 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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PUSHPA SATHYANARAYANA, J.

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