

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.No.1069 of 2018

M/s. Amarprakash Developers
Pvt. Ltd.,
represented by its Authorised
Signatory M.Ramesh,
No.412/7, G.S.T. Road,
Chromepet, Chennai 600 044

.. Petitioner

-VS-

1. Universal Sompo General Insurance Co. Ltd.,
Vajram Towers, Flat No.103,
New No.44, Old No.39, I Floor,
Halls Road, Egmore,
Chennai 600 008.
2. Universal Sompo General Insurance Co. Ltd.,
represented by its Managing Director,
Unit No.401, 4th Floor Sangam Complex,
127, Andheri Kurla Road, Andheri (E),
Mumbai 400 059.
3. Mr.N.Veeraraghavan,
No.3 First Street,
Sai Sudarshan, II Floor
North Gopalapuram,
Chennai 600 0876
4. Mr.Prosenjeet Banerjee,
A-80, Basement, Defence Colony,
New Delhi 110 024

.. Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to pass appropriate orders appointing the Presiding Arbitrator under section 11 (6) of the Arbitration and Conciliation Act, 1996 to enable constitution of the Arbitral Tribunal along with the appointed arbitrators namely 3rd and 4th

respondents to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under the Contractors All Risks Policy No.2222/56385933/00/000.

For Petitioner : Mr.Ashwanth

For Respondent : Mr. No appearance.

ORDER

This petition seeks for appointment of Presiding Arbitrator under section 11 (6) of the Arbitration and Conciliation Act, 1996 to enable constitution of the Arbitral Tribunal along with the appointed arbitrators namely 3rd and 4th respondents to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under the Contractors All Risks Policy No.2222/56385933/00/000.

2. The petitioner who is engaged in the business of property development and construction was promoting a project called "Palm Rivera" at Tirumudivakkam Main Road, Thirumudivakkam, Chennai-44 and the project was insured with the respondents 1 and 2 under a Contractors All Risks Policy which was issued on 30.7.2016. Due to Cyclone Vardha, the insured property got damaged. A dispute arose between both parties in respect settlement of the amounts claimed by the petitioner with the respondents 1 and 2.

3. As per condition 13 of the Policy, the matter was referred to arbitration

and the 3rd respondent was nominated as arbitrator on behalf of the petitioner and the 4th respondent was nominated as arbitrator on behalf of the 1st and 2nd respondents. Since there was no consensus between the parties in appointing the Presiding arbitrator, the petitioner has approached this Court for appointment of Presiding Arbitrator in order to form Arbitral Tribunal to resolve the disputes as per the Insurance Policy.

4. This Court admitted the matter on 6.12.2018 and issued notice to the respondent. Even though notice has been served on the respondents, the respondents have not entered appearance.

5. Learned counsel for the petitioner would submit that as per the arbitration agreement, both parties have to nominate their own nominee arbitrators and the nominee arbitrator shall select the Presiding Arbitrator.

6. He would further submit the petitioner's nominee arbitrator suggested appointment of Mrs. Justice Chitra Venkataraman, former Judge of this Court as Presiding Arbitrator and the nominee arbitrator referred on behalf of the respondents 1 and 2 suggested the name of a Retired Judge of the Delhi High Court be appointed as a Presiding Arbitrator.

7. According to the petitioner, as per the agreement, the Seat of arbitration would be at Chennai and therefore, it will be conducive to appoint a Retired Judge of this Court as the Presiding Arbitrator.

8. Since there is no consensus between the 3rd and 4th respondents, who are the nominee arbitrators on behalf of the petitioner and respondents 1 and 2 respectively, the petitioner has approached this Court for appointment of Presiding Arbitrator, in order to constitute Arbitral Tribunal.

9. I have considered the submissions made on either side.

10. It is not in dispute that the seat of Arbitration shall be at Chennai. Both the parties have nominated Arbitrators on their side. It only remains to appoint a Presiding Arbitrator. Since the seat of Arbitration is fixed at Chennai, it is always advised to appoint a person, who is residing at Chennai, as a Presiding Arbitrator. As submitted by the learned counsel for the petitioner, appointing a retired Judge of the High Court of Delhi may cause delay and inconvenience to the parties. Furthermore, appointment of Arbitrator from Delhi is certainly involved additional expenses.

11. Considering the convenience of the parties, this Court is inclined to appoint Mrs. Justice Chitra Venkatraman, Former Judge of this Court, as Arbitrator.

12. In view of the above, Mr. N. Veeraraghavan (3rd respondent) is appointed as arbitrator on behalf of the petitioner, Mr. Prosenjeet Banerjee (4th respondent) is appointed as Arbitrator on behalf of the respondents 1 and 2 and

Mrs. Justice Chitra Venkatraman, Former Judge of this Court, residing at New No.31, Old No.17-B, IV Main Road, Raja Annamalaipuram, Chennai 600 028 is appointed as Presiding Arbitrator. The nominee Arbitrator and the Presiding Arbitrator shall constitute the Arbitral Tribunal.

13. The Arbitral Tribunal shall adjudicate upon the disputes interse the parties and pass an award as expeditiously as possible, and in any event, within a period of six months from the date of first sitting. The learned Arbitrators are at liberty to fix their remuneration and other incidental expenses which shall be borne by both parties equally.

14.The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

msr/tk

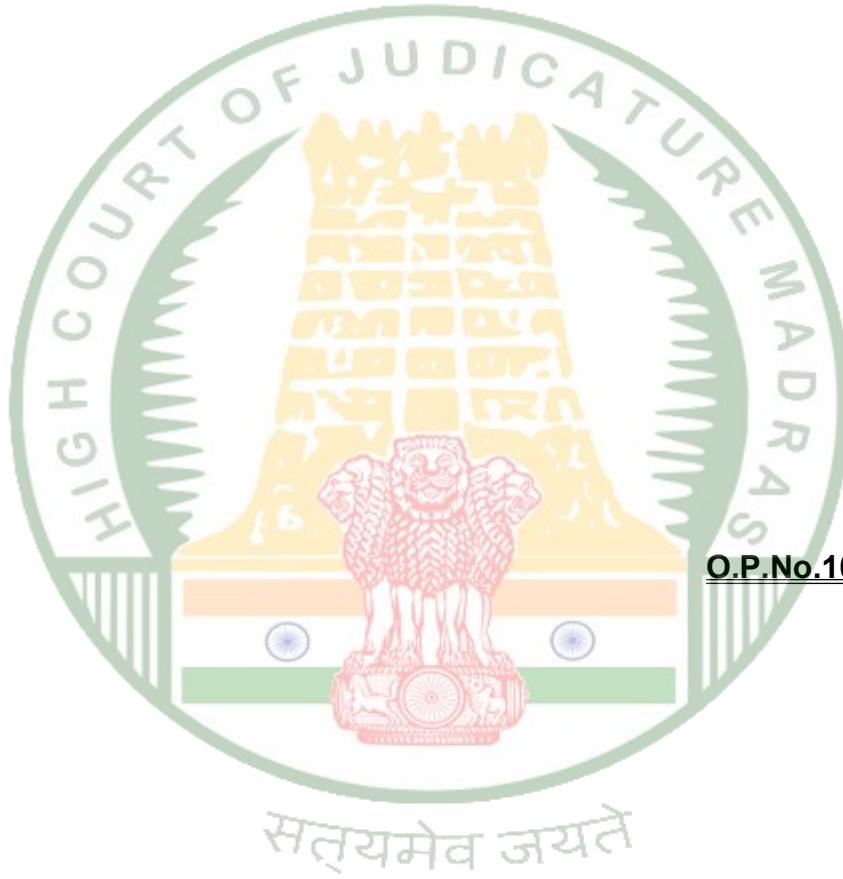
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M.GOVINDARAJ, J.

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