

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

ORIGINAL PETITION NO.1022 OF 2018
AND APPLICATION NO.2325 OF 2018

M/s.Senthil Construction Corporation
Private Ltd., represented by
Mr.R. Ramkumar, Executive Director
SENTHIL TOWERS, 6th Floor, 1078,
Avinashi Road, Coimbatore 641 018,
Corporate Office at
Guna Complex, Annexure - 1,
443, Annasalai, Teynampet,
Chennai 600 018

.. Petitioner

Mrs. Chandra,
Proprietrix,
M/s SSR Pankajam Kalyana Mandapam,
No.2, H.D. Raja Street,
Eldams Road, Teynampet,
Chennai 600 018

.. Respondent

PRAYER: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 as amended by Act 3 of 2016 to appoint a Sole Arbitrator to adjudicate on the disputes which have arisen between the petitioner and the respondent herein under the Contract Agreement

dated 16.11.2015.

For Petitioner : Mr.Hari Shankar Mani

For Respondent : No appearance

ORDER

This Original Petition is filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate on the disputes which have arisen between the petitioner and the respondent under the Contract Agreement dated 16.11.2015.

2. The petitioner is a Construction Company and they entered into an agreement with the respondent for constructing a Marriage Hall in the name and style of "SSR Pankajam Kalyana Mandapam". The respondent floated a bid and the petitioner became the successful bidder. On 16.11.2015, the respondent issued a Letter of Award accepting the amount quoted by the petitioner. Thereafter, the petitioner has also commenced the work. During the course of construction works, an amount of Rs.22,21,540/- fell due and the parties have entered into a revised terms of payment vide letter dated 25.11.2016. Subsequently, the respondent issued a notice of termination

dated 16.06.2017 and alienated the property to a third party.

3. The agreement between the parties provides for arbitration clause, thereby enabling the parties to employ arbitration as a method of settlement of disputes. The petitioner issued a demand notice dated 10.07.2017 seeking payment of outstanding dues. Since there was no response from the other party, the petitioner invoked arbitration clause and issued notice dated 19.08.2017 as per Section 21 of the Arbitration and Conciliation Act, 1996 nominating Mr.J.S.Padmanabhan, Chartered Engineer, as a Sole Arbitrator. To this notice also, the respondent has not responded. Aggrieved over the action of the respondent, the petitioner is before this Court seeking appointment of Arbitrator.

4. Despite receipt of the notice issued by this Court in the above Original Petition, the respondent has not chosen to appear either in person or through counsel. The name of the respondent is also printed in the cause list. However, when the matter is taken up for hearing today, none appears on the side of the respondent. Hence, this Court decides the matter in the absence of the respondent.

5. On perusal of the materials, it is seen that Clause B.45 of

the Contract Agreement provides for arbitration, which reads as under:

"B.45. Settlement of Dispute Arbitration.

All disputes and difference of any kind whatever arising out of or in connection with the contract or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the contract) shall be referred to and settled by the client who shall state his decision in writing. Such decision may be in the form of a final certificate or otherwise. The decision of the client with respect of any of the excepted matters shall be final and without appeal. But if the Contractor be dissatisfied with the decision of the Client on any matter, question or dispute of any kind (except any of the accepted matters) or as to the withholding by the client of any certificate to which the contractor may claim to be entitled, then and in any such case contractor may within twenty eight days after receiving notice of such decisions give a written notice to the other party requiring that such matters in dispute be arbitrated upon. Such written notice shall specify the matters which are in dispute and such dispute are difference of which such written notice has been given

and no other shall be and is hereby referred to the Arbitration and final decision of a single Arbitrator being an Architect / Engineer to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of single Arbitrator, to the Arbitration of two Arbitrators, one being Fellows of the Indian Institute of Architects and other being a chartered engineer, one to be appointed by each party, which arbitrators shall before taking upon themselves the burden of reference appoint an Umpire.

The Arbitrator, the Arbitrators or the Umpire as the case may be shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matters referred to in preceding clause 48, and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid.

Upon every or any such reference the cost of and incidental to the reference and award respectively shall be in the direction of the Arbitrator, or Arbitrators or the Umpire as the case may be who may determine the amount thereof, or direct the same to be fixed as between attorneys and

client or as between party and shall direct by whom and to whom and in what manner the same shall be borne and be paid. This submission shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration Act, 1940 or any modification thereof for the time being in force, subject to the condition that prescribed statutory both the parties. The award of the Arbitrator or Arbitrators of the Umpire as the case may be shall be final and binding on the parties.

Provided always that the client shall not withhold the payment of an interim certificate, nor the Contractor, except with the consent in writing of the Architect / consultant / EIC in any way delay the carrying out of the works by reason of any such matters, question or dispute being referred to Arbitration but shall proceed with the work with all due diligence and shall, until the decision of the arbitrator or arbitrators of the Umpire as the case to be given, abide by the decision of the client and no award of the Arbitrator or the Arbitrators or the Umpire as the case may be shall relieve the Contractor of his obligation to adhere strictly to the EIC instructions with regard to the actual carrying out of the works. The client and the contractor hereby also agree that Arbitration under this

clause shall be a condition precedent to any right of action under the contract.

Such Arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Ordinance, 1996, or any statutory modification or re-enactment thereof for the time being in force. The Arbitration proceeding shall be held in Chennai and the Courts in Chennai shall alone have jurisdiction in the matter."

6. It is further seen that the petitioner has issued a demand notice dated 10.07.2017 to the respondent demanding a sum of Rs.53,88,878/-. This notice is followed by another notice dated 19.08.2017, invoking arbitration clause. However, there was no reply for the same.

7. Considering the facts and circumstances of the case, this Court is of the considered opinion that the petitioner has complied the requirements of Section 11 of the Arbitration and Conciliation Act, 1996 and thus, entitled for appointment of an Arbitrator by this Court. In the light of the circumstances detailed above, this Court is inclined to appoint Mr.E.Omprakash, Senior Advocate as the Sole Arbitrator to enter

upon reference and adjudicate the disputes inter se the parties.

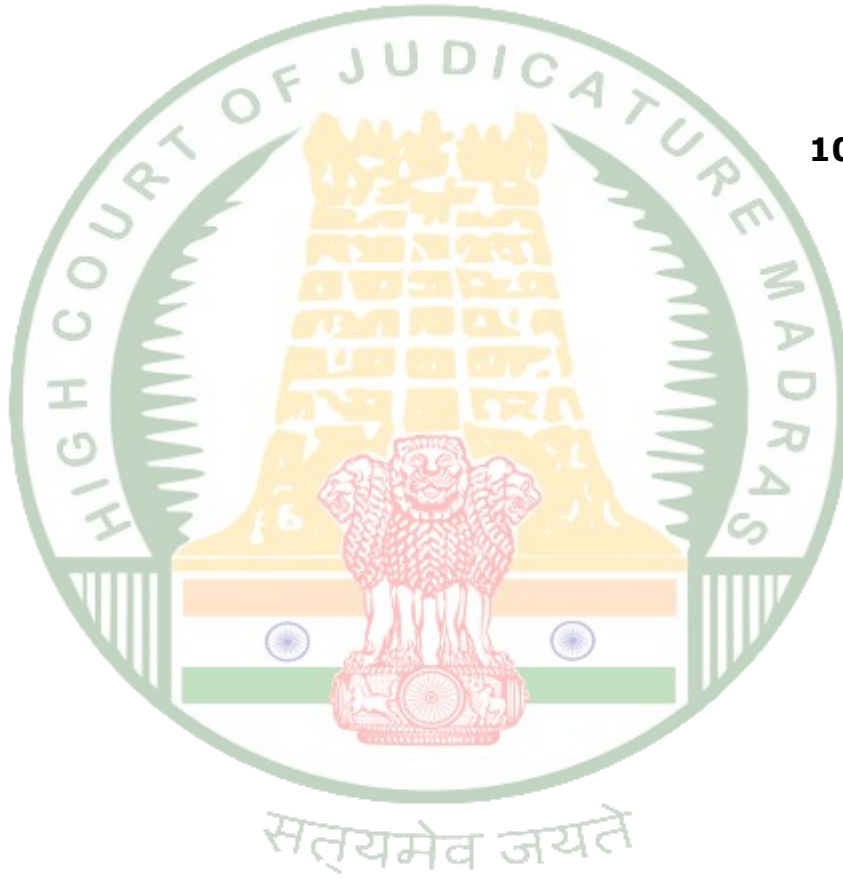
8. I thus appoint **Mr.E.Omprakash, Senior Advocate, having office at Old No.152, New No.315, V Floor, Thambu Chetty Street, Chennai - 600 001, Mobile: 9444045745 / 044-25342009** as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, after issuing notice 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 may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

9. Application No.2325 of 2018 filed by the petitioner seeking interim order directing the respondent to furnish security in the form of Bank Guarantee is made over to the Arbitrator. It is open to the parties to approach the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996, for further orders.

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

msr/tk

10.01.2019



WEB COPY

M.GOVINDARAJ, J.

msr/tk



ORIGINAL PETITION NO.1022 OF 2018
AND APPLICATION NO.2325 OF 2018

WEB COPY

10.01.2019