

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION No.1 of 2014

ORDER:

The case of the applicant is that Smt. B. Kamala Devi and B. Manjula Devi are absolute owners of the property No.4-1-357/1 & 2, admeasuring 600 square yards situated at Hanuman Tekdi, Hyderabad. Subsequently, late Smt. B. Kamala Devi and Smt. B. Manjula Devi have obtained building permission from MCH for construction of Cellar, Ground and Three Floors dated 23.03.1991 and thereafter, they entered into a development agreement dated 29.01.1992 with the 1st respondent. The applicant has become absolute owner of the entire property by virtue of the will executed by late Smt. B. Kamala Devi, his mother, bequeathing her interest in his favour and also due to relinquishment of share of Smt. B. Manjula Devi, his sister, in his favour. As the 1st respondent has violated the terms of agreement and constructed the building with deviations and was trying to induct the third parties into possession, the parties have invoked arbitration clause No.15 to resolve the disputes and approached Mr. K. Venkata Swamy, arbitrator, who did not evince any interest and not taken any steps and the parties sought for removal of the arbitrator and appointment of fresh arbitrator. Later, OP.No.18 of 1998 was filed before the IV Senior Civil Judge, City Civil Court, Hyderabad, for appointment of an arbitrator and learned Senior Civil Judge by order dated 13.04.2006 has appointed Sri K.K. Waghray as an arbitrator to resolve the disputes. Sri K.K. Waghray by letter dated 28.09.2006 has intimated that since he was teacher to the father of the applicant's counsel he cannot accept the appointment and

requested to seek for fresh appointment of arbitrator. On 09.09.2011, the applicant issued legal notice to the respondent to complete the work as per the agreement dated 29.01.1992 and the respondent not replied to the legal notice. Hence, the present application is filed by the applicant for appointment of fresh arbitrator in order to resolve the disputes between the parties.

2. Heard learned counsel for the applicant and learned counsel for the respondents.

3. The facts stated above were not disputed by the respondents by filing any counter affidavit. When a legal notice was issued on 09.09.2011 and even though it was served, there is no reply which goes to show that the assertions made by the applicant are correct.

4. Now for the purpose of this application the only requirement is to see whether there is arbitration clause in the agreement. Undoubtedly, the agreement contains arbitration clause 15, which reads as follows:

“In case of any dispute as regards the said agreement the same would be referred to Sri K.Venkatswamy who shall be the sole arbitrator and his decisions would be binding on the parties.”

5. In view of the existence of the arbitration clause in the agreement and earlier two arbitrators expressed their inability to continue the arbitration proceedings and since there is no opposition by the respondents by filing counter affidavit, this Court is of the opinion that this application is to be allowed.

6. Accordingly, the arbitration application is allowed appointing Sri A.Nava Mohan Rao, Retired District Judge, as the sole Arbitrator for resolution of dispute(s) between the applicant

and respondents, arising out of agreement dated 29-01-1992, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23-10-2015, which shall be borne by both parties in equal measure. No order as to costs.

A.RAJASHEKER REDDY, J

Date: 12-11-2019

Note:

Mark a copy to Sri A.Nava Mohan Rao,
Retired District Judge,
H.No.5-4-666, 2nd Floor,
Peshawar Plaza, Kattlemandi,
Abids,
Hyderabad.

(b/o)
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