

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.76 OF 2013

ORDER

By way of this application filed under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), the applicants seek appointment of a sole Arbitrator for resolving their disputes with the respondents. The value of the claim of the applicants is quantified at Rs.20,00,000/-.

The applicants filed O.S.No.264 of 2011 on the file of the learned Chief Judge, City Civil Court, Hyderabad, against the respondents seeking partition and possession of the house property bearing Municipal No.21-1-878 to 883, Deodi Mama Jameela, and the ground floor portion of the premises bearing Municipal No.21-2-181, Charkaman, Hyderabad. While so, the respondents filed I.A.No.43 of 2012 in the said suit under Order 7 Rule 11(d) CPC seeking dismissal of the suit on the strength of the arbitration clause contained in the Memorandum of Understanding (MoU) dated 24.01.2008 entered into by and between the parties. The trial Court accepted their plea and relegated the parties to the remedy of arbitration, *vide* order dated 27.08.2012. Thereupon, the applicants addressed legal notice dated 06.04.2013 to the respondents invoking the arbitration clause in the MoU dated 24.01.2008 and seeking their concurrence for appointment of Sri K.V.Giridaran, Retired District Judge, as the sole Arbitrator to resolve their disputes. Having received no response thereto, the applicants moved this Court seeking appointment of a sole Arbitrator.

Notice having been ordered on this application, Sri Bankatlal Mandhani and Sri Ganshyamdas Mandhani, learned counsel, entered appearance for the respondents. However, no counter was filed by them

contesting this application. Sri Ganshyamdas Mandhani, learned counsel, would inform this Court that he has no objection to the appointment of an Arbitrator for resolution of the disputes between the parties.

In terms of Section 11(5) & (6) of the Act of 1996, as amended by Act 3 of 2016 with effect from 23.10.2015, in an arbitration with a sole Arbitrator, if the parties fail to agree on the arbitrator within thirty days of receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the High Court or any person or institution designated by such Court. As this Court is given the provision to deal with applications under Section 11 of the Act of 1996 by the Hon'ble The Chief Justice, High Court of Telangana, it would be within its power to undertake the exercise contemplated by Section 11(5) & (6) of the Act of 1996. As per Section 11(6A) of the Act of 1996, which was inserted therein by Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering an application under Section 11(5) & (6) of the Act of 1996 shall confine itself to examination of the existence of an arbitration agreement and no more.

Perusal of the MoU dated 24.01.2008 reflects that the applicants and the respondents were all parties thereto. The arbitration agreement as embodied in the said MoU reads thus:

'The beneficiaries herein agree that they will cooperate with each other in all matters and in case of dispute or otherwise will appoint a Arbitrator to resolve the issue, the decision of the Arbitrator will be final and acceptable to all the 5 beneficiaries.'

As the existence of an arbitration agreement between the parties is not in dispute and as they are also ready and willing to submit to arbitration for resolution of their disputes, this arbitration application is ordered appointing Sri P.Udaya Kumar, Retired District Judge, residing at

Flat No.204, Tatajis Creative Heights, Masjid Banda, Kondapur, Hyderabad, as the sole Arbitrator for resolution of the disputes between the applicants and the respondents, arising out of the MoU dated 24.01.2008, 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.

SANJAY KUMAR, J

20th FEBRUARY, 2019

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