

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION No.149 of 2017

ORDER

The applicants, 13 in number, seek appointment of a sole Arbitrator, under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve their claim for a sum of Rs.2,00,00,000/- raised against the two respondents.

Notice was ordered upon this application on 22.12.2017 and Sri A.Manohar Reddy, learned counsel, entered appearance for the respondents on 02.02.2018. The respondents however did not choose to file a counter contesting this application.

Applicants 1 to 12 are the owners of an extent of Ac.10.00 guntas of agricultural land in new Sy.No.245 (old Sy.No.73) of Narkhoda Village, Shamshabad Mandal, Ranga Reddy District. They executed an Agreement of Sale-cum-Power of Attorney in favour of applicant 13, after receiving the entire sale consideration, and put him in possession. Applicant 13 was approached by the respondents who claimed that they had the expertise and the financial resources to develop the subject land into open plots/ farm houses with necessary amenities. Thereupon, the applicants and the respondents executed the registered Development Agreement-cum-Power of Attorney dated 11.01.2016, bearing Document No.262 of 2016. The development proposed thereunder was to be completed within a time frame as per Clause 6 of the Development Agreement.

Alleging that the respondents failed to abide by their obligations in terms of the Development Agreement, the applicants got issued legal notice dated 28.08.2017 to the respondents terminating the registered Development Agreement-cum-Power of Attorney dated 11.01.2016 and calling upon them to pay damages @ Rs.50/- per square yard. They

further stated that they were ready to submit the matter to arbitration as per Clause 17 of the Development Agreement and while nominating Sri V.Veera Raghavan, Retired District Judge, as their Arbitrator, they requested the respondents to name their Arbitrator within one month, so that both the Arbitrators could decide upon an Umpire. The aforesaid notice was sent to the respondents by Registered Post with Acknowledgment Due and the duly signed acknowledgment card, evidencing receipt of the notice by respondent 1, is placed on record. There was, however, no reply from the respondents.

Sri A.Manohar Reddy, learned counsel, was not present when the application was taken up for hearing. Having heard Sri Sharad Sanghi, learned counsel for the applicants, this Court reserved orders.

Clause 17 of the subject registered Development Agreement-cum-Power of Attorney reads as under:

'17. That in case if any disputes arises among the members of the First Party and Second Party/Developer and that the Development is being interrupted in view of such dispute, the members of the First Party and the Second Party/Developer has to refer the matter to the arbitrators to be appointed each one by both the parties. The decision of the arbitrators is binding on the parties and if there is any conflict of decision by the arbitrators the matter may be referred to umpire as per the arbitration and conciliation act 1996. If arbitration fails, any proceedings arising out of or in connection with this agreement may be filed before the district court, Ranga Reddy District.'

Clause 18 of the Development Agreement provides for compensation being paid by the respondents to the applicants at Rs.50/- per square yard as damages if they fail to complete the development within the stipulated time. Such damages were to be paid for a period of six months and in spite of that, if the venture was not completed even after paying damages, the applicants were entitled to ask the respondents to leave the site. It is in the context of this clause that the applicants

issued the arbitration notice dated 28.08.2017 and quantified their claim at Rs.2,00,00,000/-.

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.

In the case on hand, existence of the arbitration agreement in Clause 17 is clear and manifest. There is also no contest from the respondents. It may however be noted that the arbitration agreement in Clause 17 is rather peculiarly worded as appointment of an Umpire is contemplated thereunder only if the two Arbitrators nominated by the parties disagree. This is not in keeping with the norms and the settled procedure. Further, though the quantum of the claim is high, the claim itself falls in a narrow compass warranting appointment of a sole Arbitrator instead of a Tribunal of multiple Arbitrators. In any event, the applicants now seek appointment of a sole Arbitrator and as the respondents have not chosen to contest this application, it is deemed that both parties are agreeable to appointment of a sole Arbitrator. However, though Sri Sharad Sanghi, learned counsel, would seek confirmation of the named Arbitrator, Sri V.Veera Raghavan, Retired District Judge, this Court is of the opinion that for the purpose of ensuring fairness on the face of the record, it would be appropriate to appoint an independent Arbitrator.

The Arbitration Application is accordingly ordered appointing Sri Justice C.V.Ramulu, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at H.No.2-2-18/31(A-23), Durgabai Deshmukh Colony, Bagh Amberpet, Hyderabad-13, as the sole Arbitrator for resolution of the claim for Rs.2,00,00,000/- raised by the applicants against the respondents 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.

19th FEBRUARY, 2019

PGS

JUSTICE SANJAY KUMAR

