

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.135 OF 2018

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'), Smt.Pushpa Bai, Hyderabad, seeks appointment of a sole Arbitrator to decide her claim for a sum of approximately Rs.1,31,91,135/- raised against M/s.Legend Estates Private Limited, Hyderabad, the respondent company.

The applicant claims to be the absolute owner of the property admeasuring 2838 square yards in the premises bearing House Nos.8-2-316/A and 8-2-317/A, situated at Road No.14, Banjara Hills, Hyderabad. She entered into a registered Development Agreement-cum-General Power of Attorney on 06.08.2013, bearing Document No.1667 of 2013, with the respondent company. Disputes having arisen in relation to and under this document, she got addressed legal notice dated 02.01.2017 to the respondent company invoking the arbitration agreement under Clause 15 thereof and nominating a retired Judge as the sole Arbitrator to decide her claim against the respondent company. She called upon the respondent company to inform its consent to such appointment. It is her case that despite service of the aforestated arbitration notice, the respondent company did not choose to reply. Hence, this application.

Notice having been ordered, Sri Avinash Desai, learned counsel, entered appearance for the respondent company.

The Managing Director of the respondent company filed a counter-affidavit. Therein, he stated that there was delay on the part of the applicant in filing this application 23 months after the date of issuance of

the arbitration notice. He also adverted to the merits of the claim raised by the applicant and sought dismissal of the application.

Clause 23 of the registered Development Agreement-cum-General Power of Attorney dated 06.08.2013 embodies the arbitration agreement between the parties. It reads as under:

'23. In case of any disputes arising between the parties hereto touching these presents the matter shall be referred to a sole arbitrator, appointed mutually by both the Parties and the award shall be final and binding on both the parties and the relevant provisions of the Arbitration & Reconciliation Act shall apply. Law of evidence will not be applicable to the proceedings. The arbitration proceedings shall be held at Hyderabad and in English Language.'

It is not in dispute that an arbitration agreement exists between the parties. It is not within the domain of this Court to enter into the merits of the claim raised by the applicant and the rebuttal thereof by the respondent company. This is because of Section 11(6A) of the Act of 1996, inserted therein by Act of 3 of 2016 with effect from 23.10.2015, which postulates that the High Court while considering an application under Section 11(5) and (6) of the Act of 1996 shall confine itself only to examination of the existence of an arbitration agreement and no more. In consequence, the delay on the part of the applicant in filling this application and its impact, if any, on her claim are also not within the ken of this Court while dealing with this application filed under Section 11(5) and (6) of the Act of 1996.

On the above analysis, this Arbitration Application is ordered appointing Sri Justice N.Ravi Shankar, retired Judge, erstwhile High Court of Andhra Pradesh, residing at H.No.1-96/1, Prabath Nagar, Chaitanyapuri, Near Ganga Hospital, Hyderabad-60, as the sole Arbitrator for resolution of the disputes between the applicant and the respondent

company, arising out of the Development Agreement-cum-General Power of Attorney dated 06.08.2013, 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

25th MARCH, 2019

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