

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.10.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.285 of 2020

M/s.Sherton Builders (1) Pvt Ltd.,
Represented by its Managing Director, Mr.S.Sridharan,
having office at;
Sabari Novas S-2, II Floor,
No.17, Lady Madhavan Road,
Mahalingapuram, Chennai - 34.

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Slum Clearance Board,
NO.5, Kamarajar Salai,
Chepuak, Chennai - 600 005.

2.The Chief Engineer,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai - 600 005.

... Respondents

PRAYER: Original Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996, to appoint an arbitrator to adjudicate the dispute that had arisen between the petitioner and the respondent.

For Petitioner : M/s.K.Rajasekaran

For Respondents : Mr.S.Prabhu

ORDER

The above petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The petitioner which is a company incorporated under the Companies Act is engaged in the business of Civil Engineering and Electrical Contractors.

3. The petitioner had participated in a tender floated by the Tamil Nadu Slum Clearance Board for construction of 176 Nos. of slum tenements at Ezhil Nagar Okkium Thoraipakkam in Kancheepuram District for estimated cost of Rs.92,64,86,000/-. The petitioner was declared as the lowest tenderer and his bid was accepted by the respondent vide proceedings dated 23.01.2009. The site was handed over to the petitioner on 11.03.2009 and he had also commenced work on the very same day. However, the work was

directed to be stopped by the respondents on 28.04.2009, in view of an interim injunction granted against proceeding with the work by this Court in W.P.No.30725 of 2008, by order dated 08.04.2009.

4. Thereafter, the interim order was vacated on 28.07.2010 and work recommenced only on 16.08.2010. Therefore, for a period of 15 months, the petitioner was not able to carry on the work on account of the stoppage and the delay cannot be attributed to the petitioner. The delay has had a severe impact due to the escalation of the cost of material, men and labour. The delay was not on account of the petitioner but due to orders passed by this Court. The following factors also contributed to the delay. The heavy rainfall and consequent water logging in the area, as a result of which, there was difficulty in the heavy vehicles carrying steel, cement, Bricks and Sand etc., to reach the site. Apart from this, the non availability of the river sand on account of the ban imposed by the Government also resulted in the delay. In addition to the above, the respondent also effected changes in the structural design. By reasons of all of the above, the petitioner claimed extension of time as provided in the

agreement. Since the delay was not on account of the petitioner, the extension of time was granted without penalty being imposed. The petitioner would submit that in view of the various issues they had, by reasons of the delay, the petitioner had incurred a heavy loss.

5. Though the delay cannot be attributed to the petitioner, the respondents on the advice of their sub committee recommended recovery from out of the final bill of the petitioner. The final bill was paid after deducting a sum of Rs.38,44,000/- against Audit Para. Further, sum of Rs.24,64,403/- was also deducted.

6. In the light of the above, the petitioner had invoked the arbitration clause in the agreement, as disputes had arisen with reference to the sum of Rs.38,44,000/- and a sum of Rs.24,64,403/-. The articles of the agreement provided for appointment of Arbitrator by the Competent Civil Court, where the dispute exceeds of Rs.50,000/-. Since in the case on hand, the amount recoverable is a sum of Rs.38,44,000/-, the petitioner had invoked the jurisdiction of this Court for seeking appointment of Arbitrator.

7. The respondent had filed a counter denying the contentions herein.

8. From the notes paper, it is seen that by an order dated 29.09.2020, the following order has been passed by this Court:

" Mr.S.Prabhu, the learned counsel appearing for the respondents submitted that as per their Department they are liable to pay only Rs.14,00,000/- in the event their client is willing for that amount they will pay otherwise the Arbitrator may be appointed and hence, seeks one week time in this regard.

2. Post the matter finally on 07.10.2020 under the caption "for orders".

9. Today, when the matter was called, the learned counsel for the respondent submitted that they are disputing the claim and therefore, the Court had proceeded to heard the matter. The agreement between the parties provides for resolution of dispute through the Arbitration Clause. The said Arbitration Clause reads as follows:

The Arbitration for fulfilling the duties set forth in the arbitration clause of the standard preliminary specification shall be

<i>Claims upto Rs.10,000/-</i>	<i>Superintending Engineer, Chennai Circle - 1 of TNSCB</i>
<i>Claims upto Rs.50,000/-</i>	<i>Chief Engineer, TNSCB</i>
<i>Claims above Rs.50,000/-</i>	<i>Court of Law under jurisdiction of Chennai City.</i>

10. Admittedly, the petitioner has made a claim which has been disputed by the respondent, the respondents have also not been able to arrive at consensus with reference to the appointment of a Arbitrator. It is for these reasons that the petitioner has moved this

Court invoking the provision of Section 11(6) of the Arbitration and Conciliation Act. As per the agreement for claims over and above Rs.50,000/-, the Arbitrator has to be appointed by the Courts at Chennai. Considering the language of Section 2(e) of the Arbitration and Conciliation Act, this Court being the Principal Court is vested with the jurisdiction to appoint the Arbitrator. Therefore, exercising his right, this Court appoints **Mr.L.Yusuf Ali, retired District Judge, No.63, Kandigai Street, Korattur North, Chennai - 76, Mobile No.94453 88410**, as the Arbitrator, to enter upon the reference and 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 shall fix the remuneration and the same shall be borne by the parties equally.

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