

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.348 of 2020

1. M/s. Everlike Mercantile Private Limited
having its Registered office at
No.283, Pycrofts Road, Triplicane,
Chennai; represented by its Authorised Signatory,
Mr.Ketan Chordia.

... Petitioner

Vs

Mrs. Punitha Muthu
Proprietrix of M/s. Kosalrams Foundations,
Flat A, 3rd Floor, 67/32, 1st Main Road.
Gandhi Nagar, Adyar, Chennai- 600 020.

... Respondent

Prayer : Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint Mr.K.S.Gouthaman, Advocate, New No: 49, 224-B, 4th Cross Street, Natesa Nagar, Virugambakkam, Chennai or any fit or competent person as an Arbitrator as per the provisions of the Arbitration and Conciliation Act 1996, so as to adjudicate the dispute and the claim between the petitioner and the respondent under the Sale and Construction Agreements dated 07.05.2013, and the Extension Agreement dated 27.04.2016.

For Petitioner : Mr. Uma Shankar

For Respondent : Mr. S. Ramesh

ORDER

The above Petition has been filed to appoint one K.S.Gouthaman, Advocate as Arbitrator as per the provisions of Arbitration and Conciliation Act and as per the Arbitration Clause in the Sale and Construction Agreements dated 07.05.2013 and the Extension Agreement dated 27.04.2016.

2. The petitioner would submit that the payments due from the respondent in respect of the above Agreements had not been paid and despite several requests, the respondent has not come forward to complete the sale transaction with reference to undivided share and handover the flat. The petitioner would further contend that though the Construction was completed and some flats had been sold to the 3rd parties, the respondent

had not cared to comply with her obligations under the said Agreement and therefore the petitioner had invoked the Arbitration Clause in the Sale and Construction Agreements dated 07.05.2013 and Extension Agreement dated 27.04.2016 in and by which the parties have agreed to settle the dispute between them by way of Arbitration. The petitioner has therefore come forward with the above petition, since there is no response to the notice dated 24.02.2020 whereunder, the petitioner had nominated one K.S.Gouthaman, Advocate as their Arbitrator. The Arbitration Clause contemplates a Tribunal consisting of three Arbitrators, one each to be appointed by both the parties and these two Arbitrators together were to appoint the 3rd Arbitrator. After the notice was issued in the above matter, the respondent had entered appearance and though he had taken time to file counter, to date, the same has not been filed.

3. However, the learned counsel for the respondent would contend that the claim is time barred since the Sale and Construction Agreements are dated 07.05.2013 and the respondent would submit that the signature found

in the Extension Agreement dated 27.04.2016 was not her signature. However, the counsels ultimately consented to have a Sole Arbitrator in the place of the agreed Three Member Arbitral Tribunal.

4. Accordingly, it is ordered as follows:

(i) Mr. SSP. Darwesh, District Judge, (Retd.), residing at No.15/33, Sreenivasa Street, Perambur, Chennai- 600 011, Mobile No- 7299767186, Email Id-Darwesh1944@yahoo.com, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

ii) The learned Arbitrator may, 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. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High

Court Arbitration Rules.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

01.12.2020

mrn

Index : Yes/No
Speaking order/non-speaking order

To,

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Chennai; represented by its Authorised Signatory,
Mr.Ketan Chordia.

2. Mrs. Punitha Muthu
Proprietrix of M/s. Kosalrams Foundations,
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Gandhi Nagar, Adyar, Chennai- 600 020.

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P.T.ASHA, J.

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