

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.216 of 2017

M.K. Haribabu

...

Petitioner

-Vs.-

S.Saraswathi

...

Respondent

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the impugned Award dated 20.11.2016 passed by the Sole Arbitrator Thiru.K.Dakshinamoorthy (Retd. District Judge) in the matter of Arbitration and Conciliation Act, 1996 and in the matter of dispute and in the matter of joint venture Agreement dated 09.11.2011 as the same is *ab initio void* as non est, non sustainable in law and without jurisdiction.

For petitioner : Mr.G. Jayachandran

For Respondent : Ms.Usharaman

ORDER

The respondent in the arbitral proceedings has challenged the Award dated 20.11.2016 passed by the sole Arbitrator. The main ground of challenge to the proceedings is on account of the fact that the Arbitrator has been appointed by the respondent/claimant without obtaining the consent of the petitioner herein despite the objections of the petitioner to his appointment, the Arbitrator has proceeded to pass the Award.

2.Since a preliminary issue regarding the validity of the Award on the basis of the same being passed by the Arbitral Tribunal which has been constituted without following the procedure and the provisions of the Act has been raised, this Court is only considering this preliminary objection and is not passing any Judgment on the merits of the case.

3.The records would reveal that the dispute between the petitioner and the respondent is with reference to the Joint Venture Agreement entered between them. The records would further reveal that despite several notices by the petitioner herein to the respondent asking her to take possession of the property, the same had not been done. In fact the notices sent by the petitioner was refuted by the respondent herein.

4.While so, the respondent had originally issued a notice dated 04.11.2014, making certain allegations against the petitioner by contending that there were discrepancies in the constructions done by the petitioner and that the petitioner was demanding additional amounts for handing over the possession. The said notice had only warned the petitioner that the respondent would proceed against the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996. A detailed response was given by the learned counsel appearing for the respondent on 24.11.2014 refuting the allegations made in the

notice issued by the petitioner and informing the petitioner that any action taken by her would be defended. In the meanwhile, since the orders had been passed in the Application in A.No.3771 of 2015 directing the petitioner to hand over the physical possession of the Block Nos. A and D with 8 covered Car parking to the respondent by letter dated 20.11.2016, the learned counsel for the petitioner would inform the learned counsel for the respondent that they are ready to hand over the key on the agreed date. However, the respondent had not taken the keys.

5.All of a sudden, on 25.03.2016, the respondent had *suo motu* appointed an Arbitrator and on the very same day, had also submitted their claim statement and forwarded the same to the petitioner herein.

6.The petitioner would contend that the respondent had not deemed it fit to inform and obtain the consent of the petitioner before the Arbitrator was appointed and the Arbitrator

had also ignored the objections raised by the petitioner herein. The learned counsel for the respondent has admitted that no notice was given to the petitioner or his views obtained about the Arbitrator prior to appointment the Arbitrator.

7.The learned counsel for the petitioner would rely on the Judgment of the Hon'ble Supreme Court reported in **(2005) 9 Supreme Court Cases 686 [Dharma Prathishthanam v. Madhok Constructions (P) Ltd.,]** wherein the Hon'ble Supreme Court has held that the inaction on the part of the one party cannot automatically lead to the inference that there was a implied consent or the acquiescence.

8.In the instant case, the letter dated 25.03.2016 is nothing but a claim statement addressed to the Arbitrator and putting on record the claim. It is no doubt true that the petitioner herein had not taken steps under Section 11 of the Act as soon as he had come to know about the constitution of the Arbitral Tribunal. However, since there is no consensus

between the parties to the appointment the same is therefore violative of the contemplated procedure and therefore, liable to be set aside and is accordingly set aside.

This Original Petition is allowed.

24.02.2020

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
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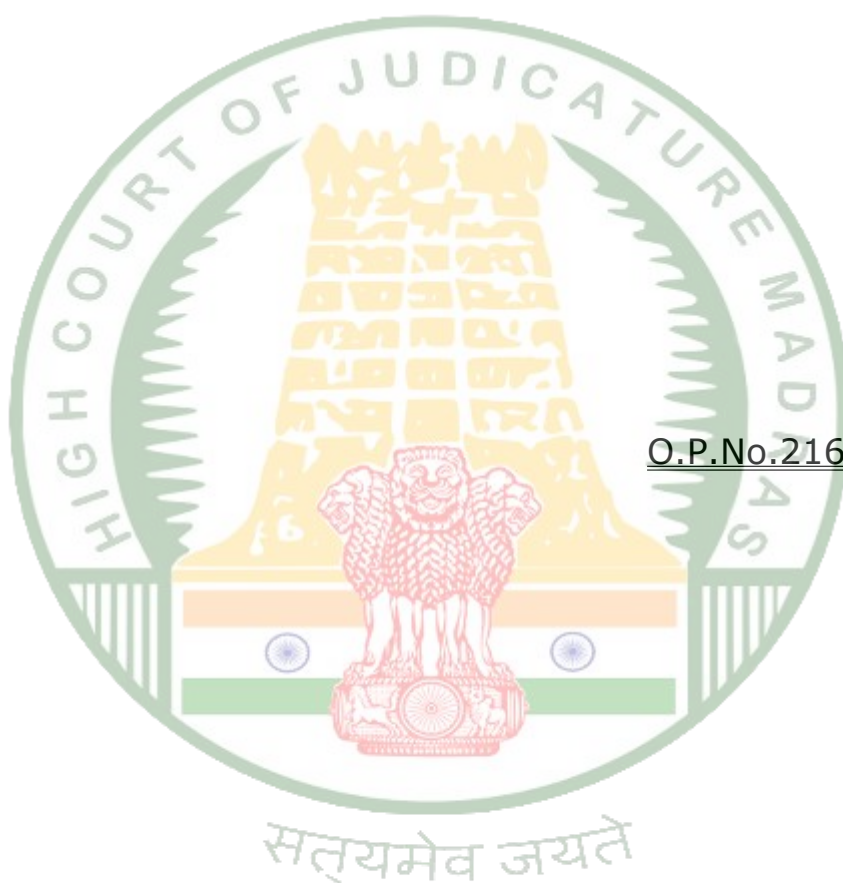


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