

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.1024 of 2019

M/s.Unique Omega Builders
Rep. By its Partner and Authorised Signatory
Mr.P.Nalasamy
No.36, D.N.Plaza, 3rd Floor
Thiruvalluvar Salai, Thiruvalluvar Nagar
Mugappair East, Chennai -37 ... Petitioner

vs.

Mag Link Infra Projects (P) Ltd.
Office No.27, Chikkanna Chettiar Street
Tirupur, Tamil Nadu-641 604 ... Respondent

Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to adjudicate all the claims and disputes arising out of the contract in the work order dated 22/01/2019 between the parties to Arbitration and for the costs of the petition.

For Petitioner : Mr.J.Chandrasekaran

For Respondent : Mr.P.R.Balasubramaniam

ORDER

Mr.J.Chandrasekaran, learned counsel on record for petitioner and Mr.P.R.Balasubramaniam, learned counsel on record for sole respondent are before this Court.

2. Instant 'Original Petition' ('OP' for the sake of brevity) is under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

3. The contours and confines of an OP under Section 11 of A and C Act have been elucidatively laid down by Hon'ble Supreme Court in ***Duro Felguera S.A. vs. Gangavaram Port Limited*** reported in (2017) 9 SCC 729 and ***Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman*** reported in (2019) 8 SCC 714. Suffice to set out Paragraph 10 of ***Mayavati Trading*** case, which reads as follows:

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in *Duro Felguera SA.*"

(underlining made by this Court to
supply emphasis and highlight)

4. To be noted, in ***Mayavati Trading*** case law, ***Duro Felguera*** principle has been reiterated.

5. The task of disposal of instant OP has become fairly simple as both the learned counsel very fairly submit that there is no disputation or contestation between them about the existence of an arbitration agreement, being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Both learned counsel submit that arbitration agreement between the parties is in the form of a covenant in a Work Order dated 22.01.2019 bearing reference UOB/DMLTN/1/18-19 and that the relevant covenant is Clause 9, which reads as follows:

'9. In event of any dispute or differences arises out of this contract. The same shall be resolved & settled by the way of arbitration and conciliation act 1996 by single arbitrator at Tiruppur Jurisdiction.'

6. Both the learned counsel make a common request that a retired judicial Officer based in Coimbatore may please be appointed as sole arbitrator.

7. In this regard, **Duro Felguera** and **Mayavati Trading** principles laid down by Hon'ble Supreme Court in **Duro Felguera** case law and **Mayavati Trading** case law became relevant. These two orders are to the effect that in the light of sub-section (6-A) of section 11 of A and C Act, testing the existence of an arbitration agreement and prima facie satisfaction in this regard is the only ground for answering section 11 OP

petition in the affirmative. In the light of the consonance and common request, instant OP being answered in affirmative.

8.In the light of the above, Mr.R.Dhandapani (Retired District Judge), at No.12, Main Road, New Ananda Nagar, P.N.Pudur, Coimbatore - 641 041 (Mob:9443219199) is appointed as sole arbitrator. Sole Arbitrator is requested to enter upon reference qua the arbitral disputes that have arisen between the parties, adjudicate upon the same and pass an award in accordance with A and C Act.

Instant OP disposed of on above terms. No costs.

24.02.2020

Speaking order: Yes/No
Index: Yes/No
gpa

Note: Registry is directed to communicate this order to Mr.R.Dhandapani, at No.12, Main Road, New Ananda Nagar, P.N.Pudur, Coimbatore - 641 041 (Mob:9443219199)

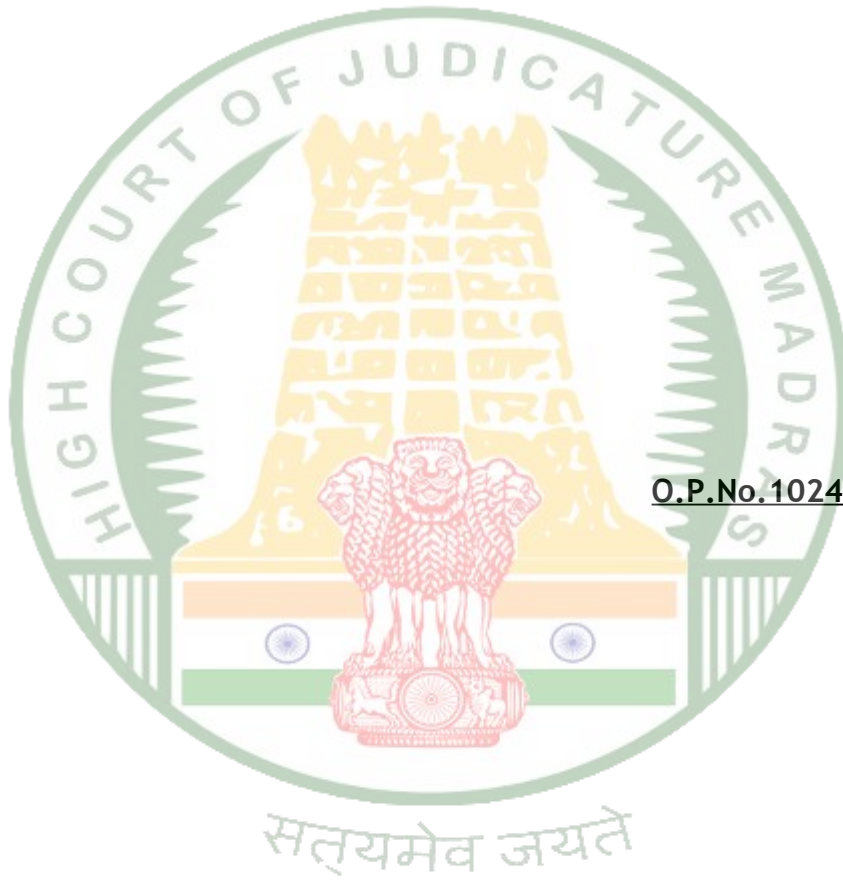
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