

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.120 of 2018

ORDER :

This Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act") is filed by the applicant seeking appointment of an Arbitrator for resolution of the disputes between the applicant and the respondent arising out of the Development Agreement-cum-General Power of Attorney, dated 06-03-2009.

The case of the applicant is that the applicant entered into Development Agreement-General Power of Attorney, dated 06-03-2009 with the respondents for development of subject property in the agreement. As the respondents have not handed over the possession of subject property, the petitioner issued legal notice, dated 25-09-2018, claiming Rs.1.00 crore as well as invoking the arbitration clause, to the respondents to the address given in the development agreement, but the same were returned with an endorsement as 'Absent-not found'. As such, the present application is filed.

Learned counsel for the applicant submits that the applicant has also filed OP.No.1969 of 2018 on the file XI Additional Chief Judge, City Civil Court, Hyderabad and the respondents were set exparte and later, they filed petition in I.A.NO.1534 of 2018 for setting aside the same.

Though the petitioner has sent notices in the present application to the respondents to the addresses given by them in I.A.No.1534 of 2018 before the Court below, the respondents deliberately got returned the same unserved with an endorsement

‘addressee left’, which goes to show that the respondents are deliberately avoiding to receive the notices. In view of the same, this amounts to service of notice on the respondents.

It is to be seen that Clause No.26 of the Development Agreement dated 06-03-2009 provides for arbitration, which reads as under:

“In case of any disputes arising between the parties hereto with regard to construction, interpretation or any covenant touching these presents, the same shall be referred to a panel of Arbitrators consisting of one Arbitrator chosen by First and Second Party and those two Arbitrators shall choose a third Arbitrator and the award of consensus such arbitrators shall be final and binding on both the parties and the relevant provisions of the Arbitration Act shall apply. However, such panel of arbitrators shall conduct the arbitration proceedings at Hyderabad and within 7 days of his appointment, the Arbitrators shall give notice to both the parties for submission of the claim statement and Counter and the matter shall be taken on weekly basis, preferably on Sundays and the entire arbitration must be completed and award must be rendered within 90 days from the date of the first notice of arbitration panel intimating the commencement of arbitrator proceedings.”

In pursuance of the said Arbitration Clause, the applicant has already issued legal notices on 25-09-2018 to the same address given by respondents in the Development Agreement and though notices were sent to the addresses given by them in I.A.No.1534 of 2018, in the application, they got returned the same deliberately, which amounts to service of notice. Even then, there was no response from the respondents. As such, in view of existence of the arbitration clause and invoking the same by the applicant by way of issuing legal notice, this application needs to be allowed.

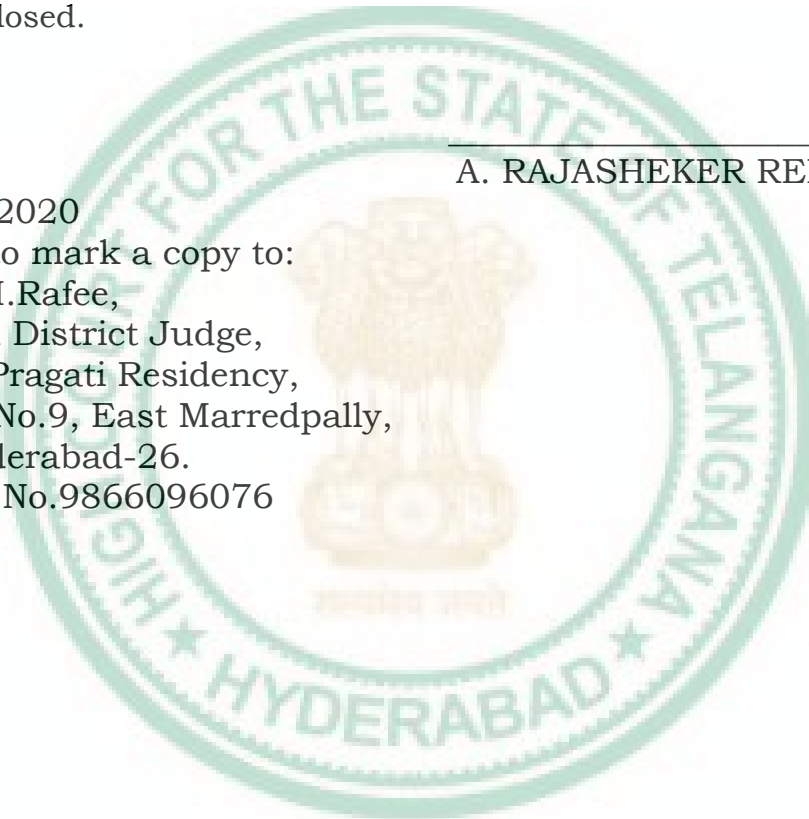
Accordingly, this Arbitration Application is allowed appointing Sri S.M.Rafee, Retired District Judge, as the sole Arbitrator for resolution of dispute(s) between the applicant and

respondent, arising out of the Development Agreement-cum-General Power of Attorney, dated 06-03-2009 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.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

A. RAJASHEKER REDDY, J

06-01-2020
Office to mark a copy to:
Sri S.M.Rafee,
Retired District Judge,
#305, Pragati Residency,
Street No.9, East Marredpally,
Secunderabad-26.
Mobile No.9866096076
B/o.
Nvl



HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.84 of 2019



02-01-2020

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