

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.01.2021**

**C O R A M**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**O.P.No.75 of 2020**

M/s.3 Infraa Developers  
(Partnership Firm),  
rep. by its Partner Mr.Gopinathan,  
No.19, Ramakrishnapuram,  
Ganapathy,  
Coimbatore – 641 006.

...Petitioner

**-V-**

Kannammal

...Respondent

**Prayer:** Original Petition filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 read with Order XXI Rules 2 and 3 of the High Court Original Side Rules praying to appoint an Arbitrator to settle the dispute arose between the parties and direct the respondent to pay the cost of the arbitral proceedings.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondent : Mr.ARL.Sundaresan  
Senior Counsel  
for M/s.AL. Ganthimathi

**ORDER**

This application has been filed for appointing an Arbitrator for resolving the disputes between the petitioner and the respondent.

2.The petitioner would contend that the petitioner had entered into a Joint Development Agreement with the respondent on 14.06.2012 for putting up a residential apartment under the name of “Shri Havisha Premium Apartment”. As per the terms of the Agreement, the respondent had undertaken to deposit the original title deeds to the schedule property and assist the petitioner in obtaining financial assistance from the Bankers or financial companies. The respondent failed to come forward to sign in the agreement. Thereafter, the respondent had also sold the property to some third parties in the year 2017.

3.The contentions of the petitioner that they had spent over Rs.2 crores on the said Project and constructions. Despite their request to the respondent to resolve the disputes, the respondent has not come forward to resolve the disputes. Therefore, invoking Clause 18 of the Joint Development Agreement dated 14.06.2012, the petitioner sent a notice

dated 10.09.2019 appointing an Arbitrator to settle the disputes between them. Though notice has been received by the respondent there is no response from them. Therefore, the present petition is filed.

4.The learned counsel for the petitioner would contend that after they had spent money on putting up a part of the construction a complaint was lodged against the son of the respondent that he had kidnapped the petitioner and made him sign on blank papers. The learned counsel therefore would contend that in the meanwhile, the persons who had booked apartments in the residential complex has also initiated the suits against the petitioner and their partners. Since there is a dispute between the parties the parties had agreed to resolve the disputes between the petitioner and the respondent.

5.The learned counsel appearing for the respondent who have also filed their counter affidavit would contend that the Agreement between the petitioner and the respondent had been cancelled by a Cancellation Deed dated 26.12.2013. He would submit that the Cancellation of Agreement

has also been acknowledged by the petitioner in the additional Written Statement filed by them in O.S.No.435 of 2015 which is the suit filed by one of the purchasers of the undivided share. In the said additional written statement, the petitioner had stated that the Joint Venture Agreement stands cancelled on 26.12.2013 at Coimbatore. The respondent has produced a copy of additional Written statement.

6.In the said additional written statement, the petitioners had submitted that the properties has been sold to one M/s.Covai New Gangai Reality Private Limited under the Sale Deed dated 14.02.2017 and the petitioner has also taken out an application in the said suit in I.A.No.6 of 2018 for impleading the respondent herein and M/s. M/s.Covai New Gangai Reality Private Limited and Ms.G.Chitradevi as parties to the suit wherein they have also reiterated the cancellation of the Joint Development Agreement. Therefore, he would submit that the present petition for appointment of an Arbitrator on the basis of the Agreement is not maintainable.

7.Heard the learned counsels appearing on either side and perused

the papers.

8.As pointed out by the learned Senior Counsel, in the additional Written Statement in O.S.No.435 of 2015, the petitioner herein has clearly mentioned that the Joint Venture Agreement entered into between them and the respondent herein was cancelled by a Deed of Cancellation of Joint Venture Agreement dated 26.12.2013. The petitioner has filed this petition on the basis of the Joint Venture Agreement that too seven years after its cancellation.

In the above circumstances, this Original Petition is not maintainable as there is no arbitral Agreement in force as on date. Accordingly, this Original Petition stands dismissed.

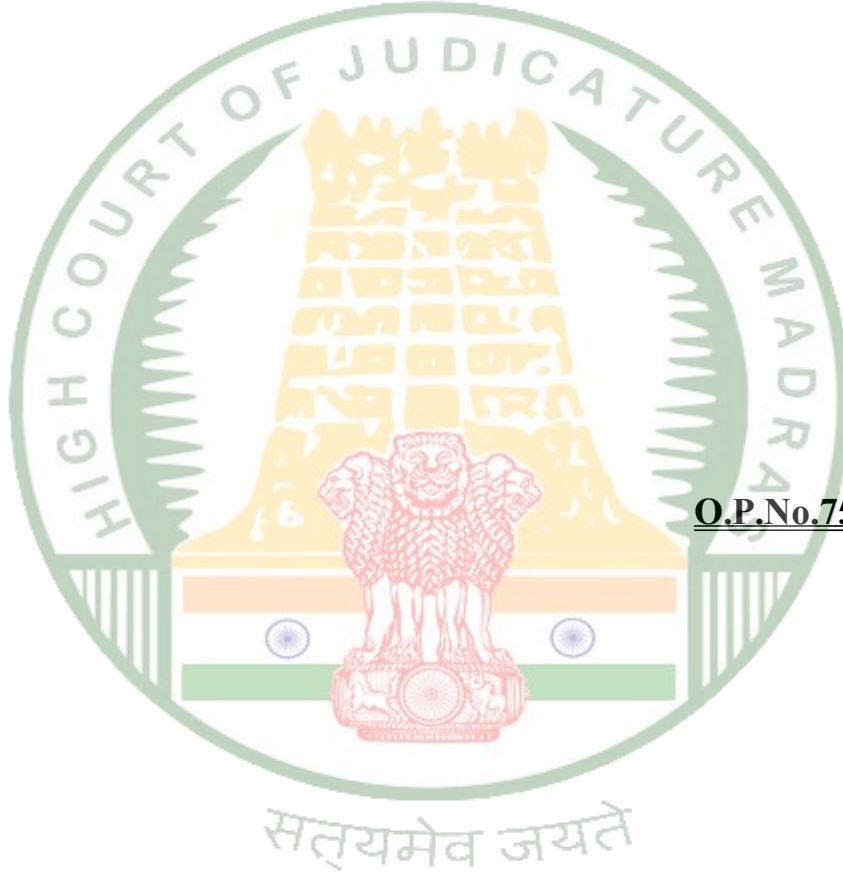
**11.01.2021**

Internet : Yes/No  
Index : Yes/No  
Speaking / Non-Speaking  
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**P.T. ASHA. J.**

mps



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