

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.399 of 2021

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C.M.P.No.2622 of 2021

K.K.Chandrasekar ... Appellant/Respondent
Vs.

M/s.Fairyland Foundation Pvt. Ltd.,
Rep. By its Authorised Signatory,
Mr.Rajasekar,
Having its Regd. Office at No.96,
Co - operative Colony, Uppilipalayam,
Coimbatore - 641 015. ... Respondent/Petitioner

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act to set aside the impugned order dated 08.01.2021 made in Arbitration Original Petition No.132 / 2020 on the file of the Principal District Judge, Coimbatore and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.N.C.Ramesh
Senior Counsel
for Mr.Naveem Kumar Murthi

For Respondent : Mr.Thiagarajan

ORDER

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996, herein after called the Act, is filed challenging the order dated 08.12.2021 passed by the Principal District Judge, Coimbatore in A.O.P.No.132 of 2020. The facts briefly stated which has culminated in the filing of the above appeal is that the parties had entered into Development Agreement dated 20.02.2013. Certain disputes arose between the parties, as a result of which arbitration proceedings were invoked.

2. The respondent had originally issued a legal notice dated 14.11.2019 calling upon the appellant to pay the sum of Rs.94,64,004/- with interest at 12%. The appellant herein had

denied the said claim. This was followed by a letter dated 28.08.2020 from the respondent to the appellant stating that they were invoking clause 42 of the Development Agreement dated 20.02.2013 for initiating arbitration proceedings and they had also named an arbitrator.

3. Simultaneously, the respondent had filed A.O.P.No.132 of 2020 on the file of the Principal District Judge, Coimbatore on 04.09.2020. In the arbitral proceedings an Advocate Commissioner was asked to note down the physical features of the schedule property and submit a report along with Photographs. The respondent had shown three schedules in the schedule of properties attached to the petition.

4. The appellant herein had filed a detailed counter stating that the respondent is not entitled to the relief claimed. Meanwhile, the respondent had moved this Court under Section 11 (4) of the Act in O.P.No.551 of 2020 for appointing an arbitrator and on 04.01.2021 this Court was pleased to appoint one Dhandapani, Retired District Judge as the arbitrator. On 06.01.2021, this matter came up before the Principal District Judge, Coimbatore and a memo was filed by the appellant herein that the arbitrator had been appointed. The learned Judge had directed the matter to be posted for clarification and the matter came up on 08.01.2021. The learned Judge who had not earlier granted any interim orders granted an order of status quo as found by the Advocate Commissioner till the sole Arbitrator commences his effective hearing and challenging the same the appellant is before this Court.

5. The main ground of attack of this order was that once an arbitrator had been appointed under Section 9 (3) of the Arbitration and Conciliation Act, as amended by Act 3 of 2016, the Courts shall not entertain the application under Section 9 (1) unless the Court finds that there were circumstances existing on account of which the applicant may not be in a position to get an effective order in an application filed under Section 17. Therefore, the learned counsel for the appellant would contend that the order should be set aside.

6. Per contra, the learned counsel appearing for the respondent would submit that no final orders have been passed in the impugned order and in fact the learned Judge has relegated the parties to appear before the arbitrator for further orders. Therefore, no exceptions can be taken to this order and the same cannot be reviewed.

7. Initially this Court attempted to bring about settlement between the parties. However, the same did not fructify into a settlement.

8. Heard the learned counsels and perused the documents.

9. A mere perusal of the impugned order would show that till 08.01.2021 the learned Judge had not passed any interim orders and on 06.01.2021, the notice of the appointment of the arbitrator was brought to the notice of the learned Judge, and the matter was adjourned to 08.01.2021. On 08.01.2021 the learned Judge has passed the very curious award and the same is extracted herein below:

"Hence, in the interest of Justice, this Court directs both the parties to maintain status quo as found by the Advocate Commissioner till the sole Arbitrator, commences his effective hearing. Accordingly, this Court orders to maintain status quo. Both the parties are at liberty to move before the sole Arbitrator to allow, modify, continue, cancel or dismiss the order of status quo of this Court. In that extent, this petition is ordered."

10. Once the arbitral Tribunal has been constituted, the Amendment Act 3 of 2016 has made it very clear that the Courts shall not entertain an application seeking interim measure and this power has to be exclusively exercised by an arbitrator. However, if exceptional circumstances are shown, the Civil Court could grant interim measures under Section 9. In the instant case no such special circumstances has been put forward by the respondent.

11. In these circumstances, the order dated 08.01.2021 in A.O.P.132 of 2020 cannot be countenanced and is therefore set aside. The Civil Miscellaneous Appeal is allowed. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge, Coimbatore.

+2cc to Mr.R.Thiagarajan, Advocate Sr.9609

C.M.A.No.399 of 2021

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