

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No. 145 of 2021

1.Mr.J.Khaja Mohideen

2.Ms.Jameela Begum

3.Mr.S.A.Jhan Mohamed

... Petitioners

Versus

1.M/s.Maana Sarovar Properties Development
Pvt. Ltd.

By its Director Naveen Jain
E 25, No.8, 16th Cross Street
Besant Nagar,
Chennai – 600 090.

2.Mr.Naveen Jain

3.Mr.Jaikumar Jain

4.Mr.Navneet Jain

5.Mr.Nalin Gulecha

... Respondents

PRAYER : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to resolve the disputes between the petitioners and the respondents in respect to the JDA dated 17.01.2004, Supplementary Agreement dated 18.06.2008 and the MOU dated 02.08.2017.

For Petitioners : Mr.M.K.Kabir
Senior Counsel for M/s.Akhil
Akbar Ali Associates
For Respondents : Mr.N.Ramakrishnan for
M/s.Waraon and Sairams

ORDER

This original petition has been filed to appoint a Sole Arbitrator in respect to the disputes between the petitioners and the respondents in respect to the Joint Development Agreement dated 17.01.2004, Supplementary Agreement dated 18.06.2008 and the MOU dated 02.08.2017.

2. Though an objection has been raised by the respondents No.2 to 5, that there is no privity of contract between the petitioners and the respondents No.2 to 5, they were not a party to the agreement. Hence, they cannot be subjected to arbitration proceedings, to that effect, a memo is filed by the petitioners to dismiss the application as against the respondents No.2 to 5 as not pressed and allow the application by appointing a Sole Arbitrator to resolve the disputes between the petitioners and the 1st respondent company. The said Memo is recorded. Accordingly, the application as far as against the R2 to R5 is dismissed.

3. As far as R1 is concerned, admittedly, there is an existence of agreement between the R1 and the petitioners, the only objection of the first respondent is that prior to the arbitration, mediation has to be conducted. It is not disputed by both sides. The petitioners had also issued notice for arbitration. However, R1 has not responded. In such view of the matter, this Court is of the view that the pre-mediation conditions set out in the agreement cannot be pressed into service, since R1 has not cooperated for the same. At any event, such mediation can also to be completed before the learned Arbitrator, if the parties are willing. With the consent of both the parties, Mr.K.Venkataraman, Judge [Retd.], High Court, Madras is appointed as an Arbitrator.

4. Considering the fact that there is an arbitration clause in the Agreement, this petition is ordered as follows:

- i) that Mr.K.Venkataraman, Judge [Retd.],
High Court, Madras, residing at 'L' Block, 125,
17th Street, East Anna Nagar, Chennai 600 102.

Mobile No.7708895435 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and the same shall be borne by the parties equally.

5. This Original Petition is ordered as against R1, leaving the parties to bear their own costs. The Original Petition is dismissed as against R2 to R5.

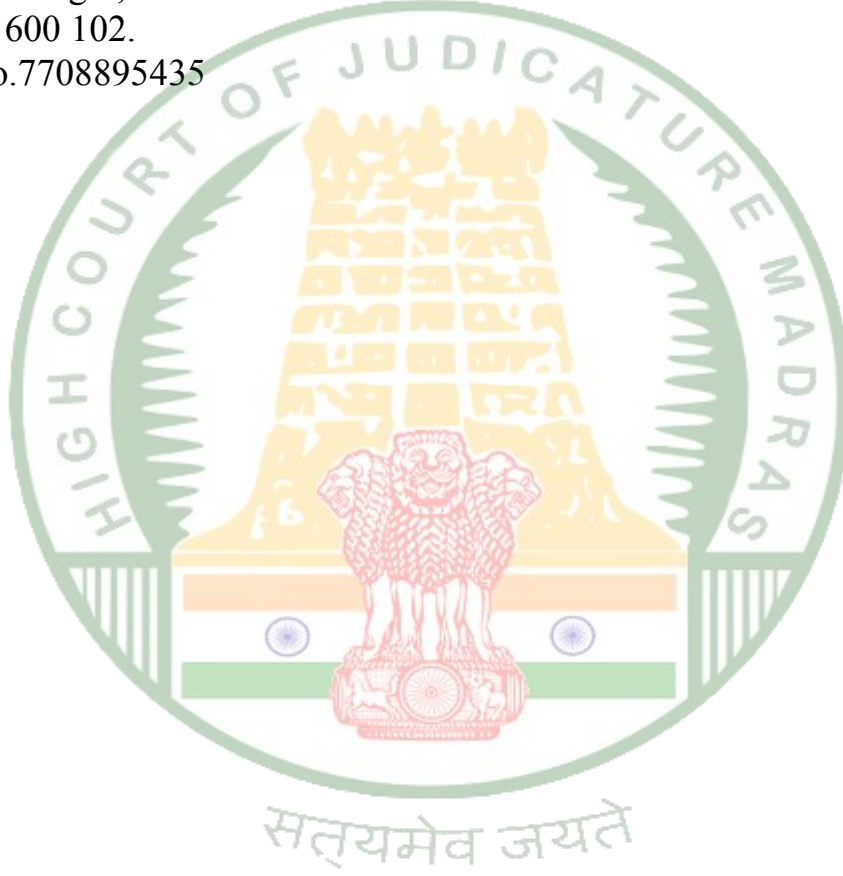
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To,

Mr.K.Venkataraman,
Judge [Retd.], High Court, Madras,
'L' Block, 125, 17th Street,
East Anna Nagar,
Chennai 600 102.
Mobile No.7708895435

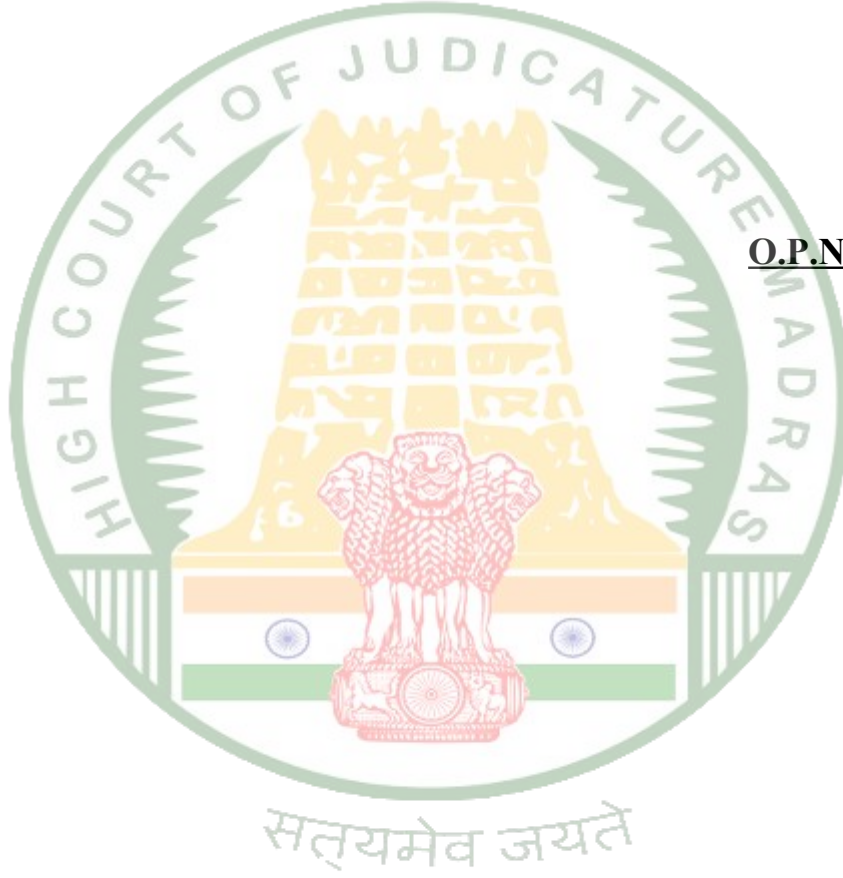


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