

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.869 of 2019

Sri Ramanuja Mission Trust
Represented by Administrative Trustees
Mr.Varadhan Chandra
Having office at No.48
Bazullah Road, T.Nagar
Chennai - 600 017

... Petitioner

vs.

R.Balamurugan

... Respondent

Original Petition filed under Section 11(6)(c) to appoint an Arbitrator and refer all the disputes arising between the parties as per Clause 11 of the agreement dated 23.09.2013 accepted by the petitioner and the respondents.

For Petitioner : Mr.S.Sai Shankar

For Respondent : Mr.P.Jesus Moris Ravi

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ORDER

Mr.S.Sai Shankar, learned counsel for petitioner and Mr.P.Jesus Moris Ravi, learned counsel 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. Prayer in instant OP is for appointment of an arbitrator and as mentioned above instant OP is under Section 11 of A and C Act.

4. Instant OP is predicated on an arbitration agreement between the parties, which is in the form of clause 11 in an agreement for sale dated 23.09.2013.

5. It is the case of the petitioner that arbitral disputes have arisen qua said agreement and the parties have not been able to arrive at consensus with regard to constitution of an Arbitral Tribunal and that has necessitated the filing of instant OP.

6. Learned counsel for respondent, adverting to the counter affidavit dated 30.01.2020 submitted that the claim of the petitioner qua the arbitral disputes has become stale or in other words, it is time barred. To be noted, a perusal of the counter statement filed in the instant OP by

the respondent reveals that besides this plea of limitation qua arbitral disputes, learned counsel has also raised a plea regarding merits of the matter.

7.This Court has carefully perused the petition filed in support of instant OP and the counter statement, the broad contents of which have been set out by way of summation supra.

8. Before proceeding further, this Court reminds itself about the contours and confines of a OP under Section 11, which have been laid down by Hon'ble Supreme Court in *Duro Felguera* case [*Duro Felguera S.A. vs. Gangavaram Port Limited* reported in (2017) 9 SCC 729] and *Mayavati Trading* case [*Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman* reported in (2019) 8 SCC 714)]. *Duro Felguera* and *Mayavati Trading* principles are to the effect that in a OP of this nature under Section 11 of A and C Act, this Court will examine the existence of an arbitration agreement between the parties and on *prima facie* satisfaction of existence of an arbitration agreement between the parties, prayer in a Section 11 petition shall be acceded to. In other words, this Court would look at OPs under Section 11 with a hood and that hood would restrict the contours of the petition and confine it to examining the existence of an arbitration

agreement and prima facie satisfaction of existence of an arbitration agreement between the parties.

9. With regard to ***Duro Felguera*** case referred to supra, relevant paragraphs are Paragraphs 47 and 59, which read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

'59. The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.

(underlining made by this Court to

supply emphasis and highlight)

10. Relevant paragraph in ***Mayavati Trading*** case is Paragraph 10

and the same 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)*

11. In the light of ***Duro Felguera*** and ***Mayavati Trading*** principles and in the light of the summation of submissions made by both sides alluded to supra, this Court has no hesitation in coming to the conclusion that this Court is *prima facie* satisfied about the existence of an arbitration agreement between the parties within the meaning of Section 7 of A and C act. To be noted, as alluded to supra, the arbitration agreement being an arbitration agreement within the meaning of Section 7 of A and C Act is in the form of a covenant in an agreement i.e., Covenant No.11 in agreement for sale dated 23.09.2013.

12. This takes us to the size of the Arbitral Tribunal.

13. A perusal of the aforesaid arbitration clause which is the arbitration agreement between the parties reveals that the parties have agreed for arbitration by a three member Arbitral Tribunal.

Notwithstanding such agreement, today, at the hearing, on instructions from respective parties, both the learned counsel submit that the Arbitral Tribunal can be downsized and it can be constituted by a sole arbitrator. Though obvious, it is made clear that downsizing of the Arbitral Tribunal and the agreement for downsizing of Arbitral Tribunal is strictly without prejudice to the other rights and contentions of both parties .

14. This Court proceeds to appoint Hon'ble Mr. Justice S. Baskaran (Retd.), No.10/15, Viswanathan Street, Srinivasa Avenue, R.A.Puram, Chennai - 28 (Mob. No: 9443698866) as sole Arbitrator. Hon'ble Arbitrator is requested to enter upon reference qua arbitral disputes that have arisen between the parties with regard to agreement for sale dated 23.09.2013 and pass an award in accordance with A and C Act and more particularly, in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

Instant OP disposed of on above terms. No costs.

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Index: Yes/No

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Note: Registry is directed to communicate this order to Hon'ble Mr. Justice S. Baskaran (Retd.), No.10/15, Viswanathan Street, Srinivasa Avenue, R.A.Puram, Chennai - 28 (Mob. No: 9443698866) forthwith.

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M.SUNDAR.J.,

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