

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Arb.O.P.No.12 of 2021

Hariharan Parasuram

.. Petitioner

Vs.

M/s.Columbia Pacific Communities (P) Ltd.,
Formerly M/s.Serene Senior Care (P) Ltd.,
Rep by its Chief Executive Officer,
Corporate Office :-
2999 12th A Main Road,
HAL 2nd Stage, Indira Nagar,
Bengaluru 560 008.

Regd. Office:-
C/o. Serene Adinath,
283/1, Ramakrishnan Street,
Chettiar Thottam,
Vandalur, Chennai 600 048.

.. Respondent

PRAYER :Arbitration Original Petition filed under Section 11(6) (a) & (c) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to adjudicate the disputes between the petitioner and arbitration agreement dated 30.07.2015.

For petitioner : Mr.V.Raghavachari

For respondent : Ms.Sivakami Shanmugampillai

ORDER

This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent arising out of the arbitration agreement dated 30.07.2015.

2. The case of the petitioner is that he is the owner of Plot No.11, “Serene Indus Valley”, Coimbatore. The project was conceptualized and executed by Serene Senior Living (P) Ltd. The project visualized a retirement community and it was to provide amenities/specifications catering to the needs of the senior citizens. M/s.Serene Senior Living (P) Ltd., constituted a sister concern viz., M/s. Serene Senior Care (P) Ltd., (hereinafter referred to as M/s.SSC) as a service provider for the community. A memorandum of understanding was executed between them on 27.04.2012.

3. M/s.SSC entered into individual service agreements dated 30.07.2015, with each purchaser/owner of the project undertaking to provide amenities and also maintenance of the existing infrastructure as mentioned in the service agreements. A refundable deposit was also collected from the members/owners of the project. As per the agreement, M/s.SSC had undertaken to provide the services viz., Catering services, Housekeeping and preventive maintenance services, Supportive healthcare services, Security services and Concierge services. The petitioner agreed to the *ad-hoc* service charges at Rs.6 per Sq.ft.

4. It is averred in the petition that the residents of the said Villas, have also formed an association viz., Serene Indus Valley Owners Welfare Association. During the general body meeting of the said association during the years 2018-19, 2019-20, it was noted that the community had been paying avoidable GST charges and there was unfair cross subsidization. The same was objected on the ground that the common amenities, maintenance and other services were equally enjoyed by all members irrespective of the size of their villas, which has resulted in imposing larger burden on the

occupants of bigger villas with a higher maintenance charge without any added benefits. The same was also brought to the knowledge of the respondent that similar retirement projects had not adopted collection of maintenance charges on a per Sq.ft basis. Regarding the same, the petitioner made multiple representations through E-mail on various dates. Since, no response was forthcoming from the respondent, the petitioner was constrained to invoke arbitration clause provided for in the service agreement.

5. Notice for arbitration was served through E-mail on 25.03.2021 to the respondent. On 06.04.2021, the respondent issued a reply through its Advocate. The main thrust of the respondent was that as the service agreements were individually executed by each owners of the villas, a collective invocation of the arbitration clause is impermissible. The petitioner *vide* reply dated 26.05.2021, insisted the respondent to give consent for appointment of arbitrator to adjudicate upon the dispute that has arisen.

6. Since the respondent had not responded to the demands made by the petitioner, the petitioner had no other option, except to approach this Court by filing a petition under Section 11 of the Arbitration and Conciliation Act, seeking appointment of Arbitrator to adjudicate upon the disputes between the petitioner and respondent.

7. Heard the learned counsel for the parties and perused the materials available on record. The learned counsel for the respondent has no objection for appointing an arbitrator.

8. In view of the fact that there exists an arbitration clause in the agreement, and since the disputes have arisen inter-se the parties and the jurisdiction of this Court having not been disputed, there had arisen a necessity to appoint an Arbitrator. There is also exchange of notice between the parties under Section 21 of the Arbitration and Conciliation Act, 1996.

9. Be that as it may. This Court is in agreement with the submissions

made on behalf of the petitioner and the dispute between the parties could be resolved only on appointment of an "Arbitrator". Accordingly:

(a) This Original Petition is allowed.

(b) Mr.Karthik Rajan, Advocate (Mobile No.94440 73830), having office at Haji Madhar Sha & Sons Building, 2nd Floor, No.148, Moore Street, Chennai – 600 001, (Landline No.044-2535 4955), is hereby appointed as Arbitrator to enter upon the reference and adjudicate upon the dispute inter-se parties.

(c) The above said learned Arbitrator, shall, after issuing notice to the parties and upon hearing them, pass an order as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(d) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, as per the provisions of the Arbitration and Conciliation Act, 1996.

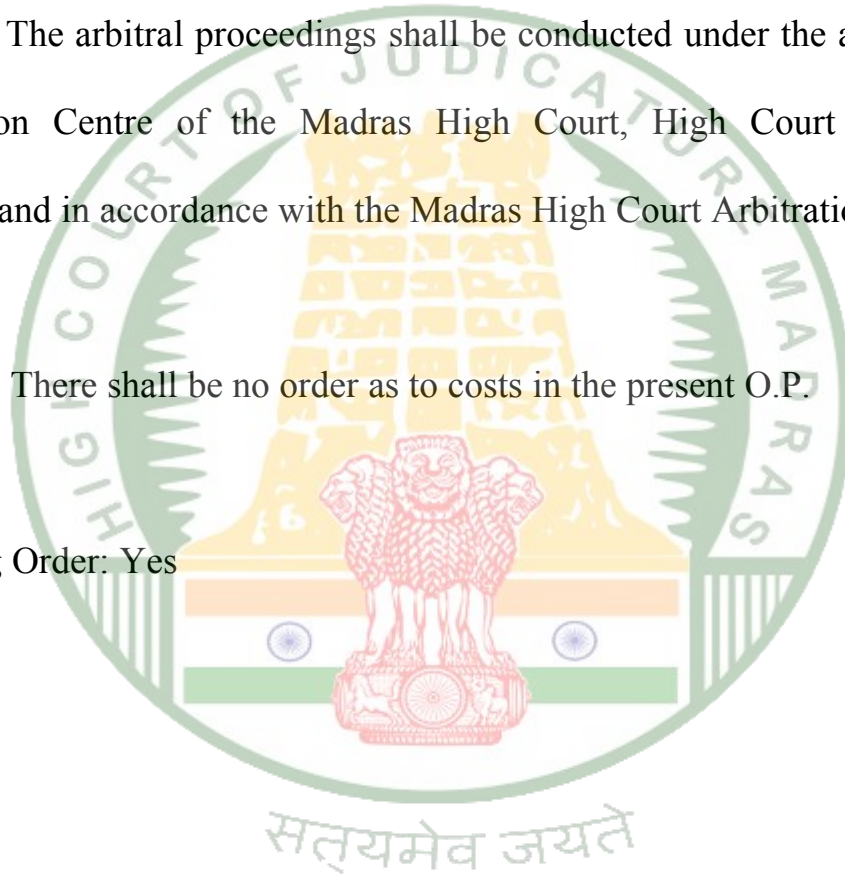
(e) The expenses incurred for arbitration shall be borne by the respective parties.

(f) The arbitral proceedings shall be conducted under the aegis of the Arbitration Centre of the Madras High Court, High Court Buildings, Chennai and in accordance with the Madras High Court Arbitration Rules.

(g) There shall be no order as to costs in the present O.P.

22.10.2021

Speaking Order: Yes
gsk



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V. PARTHIBAN, J



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