

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.440 of 2020

M/s.Jain Housing and Constructions Limited
rep.by its Vice President
Mr.R.Vasudevan,
No.98/99, Habibullah Road,
T.Nagar,
Chennai – 600 017.

...Petitioner

-V-

1.M/s.Vikranthi Foundations Firm,
a partnership firm
rep.by it Partnership
(1)Mr.J.N. Ajeeth
S/o.J.Nirmal Kumar
(2)Mrs.A.Seema
W/o.J.N.Ajeeth

2.Mr.J.N. Ajeeth

3.Mrs.A.Seema

...Respondents

Prayer: Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint an Arbitrator for the reference of the dispute arisen between the petitioner and the respondents regarding enforcing the terms of the Memorandum of Understanding as per Arbitration Clause in the Memorandum of Understanding dated 25.02.2019.

For Petitioner : Mr.Bhuvaneswaran
for M/s.S.Balasubramaniam

ORDER

The above application has been filed under Section 11(5) of the Arbitration and Conciliation Act for appointing an Arbitrator to resolve the dispute that has arisen between the parties under the Memorandum of Understanding dated 25.02.2019.

2.The case of the petitioner is that they had entered into a Memorandum of Compromise with the 1st respondent on 25.02.2019 in respect of various Survey Numbers in the lands measuring an extent of 11.13 acres situate at Kilambakkam Village, Chengalpet Taluk, Kancheepuram District. The 1st respondent had earlier entered into a Joint

Development Agreement (hereinafter referred to as JDA) dated 08.06.2018 with the land owners undertaking to develop the properties. Under this JDA, the 1st respondent was required to pay a sum of Rs.7 crores to M/s.Land Marvel Homes to cancel the existing JDA dated 10.09.2021 subsisting on the property, apart from paying the amounts for zone conversion of lands, the amounts was to be paid to the land owners. Therefore, they had entered into a Memorandum of Understanding that the 1st respondent partnership firm represented by their partners who have been shown as the respondents 2 and 3 herein on the date of the signing of the MOU, the petitioner had paid Rs.7,10,00,000/- to the 1st respondent. However, the disputes arose between the parties since the respondents were not able to fulfil their obligations under their MOU. Hence, the petitioner had issued a Legal Notice dated 17.09.2019 calling upon the respondents to perform their obligations under the MOU, failing which, they had stated that they would be undertaking the legal proceedings. Since the respondents did not come forward with any concrete proposal the petitioner had invoked the arbitration Clause under the MOU, i.e, Clause 12 and had named their Arbitrator and requested the respondents to

give their consent. However, the respondents did not give their consent. Therefore, the petitioner was constrained to approach this Court under Section 11(5) of the Arbitration and Conciliation Act.

3.Though notice was served the respondents have not entered appearance either in person or through their pleader. Therefore, this Court had set them *ex parte* by orders of this Court dated 29.01.2021.

4.The respondents have not come forward to pay their dues. The petitioner has invoked Clause 12 of the Memorandum of Understanding dated 25.02.2019. Clause 12 of the Memorandum of Understanding would read as follows:

Clause 12: *Any dispute between the parties shall be referred to and finally resolved by Arbitration. The parties expressly agree that they shall attempt to resolve through good faith any such dispute between the parties by mutual discussion. In the event of a deadlock both the parties shall mutually appoint an Arbitrator or alternatively request the*

Court to appoint an Arbitrator, who shall decide the dispute so referred to him in accordance with the Arbitration and Conciliation Act, 1996. The Award of the Arbitrator shall be final and binding on the Parties herein. The Venue of Arbitration shall be in Chennai.”

5. Since the disputes have arisen between the parties this Court appoints Thiru.S.Parthasarathy, Senior Counsel, as an Arbitrator to resolve the disputes.

6. Accordingly, it is ordered as follows:

(i) Thiru.S.Parthasarathy, Senior Counsel, residing at No.1, Second Street, Jagadambal Colony, Royapettah, Chennai – 600 014, Mobile No.9176637537, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The arbitrator may, 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. It is open to

the respondent to raise all legal objections as to the validity of contract.

iii) The arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

08.02.2021

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To
Thiru.S.Parthasarathy,
Senior Counsel,
No.1, Second Street,
Jagadambal Colony,
Royapettah,
Chennai – 600 014.

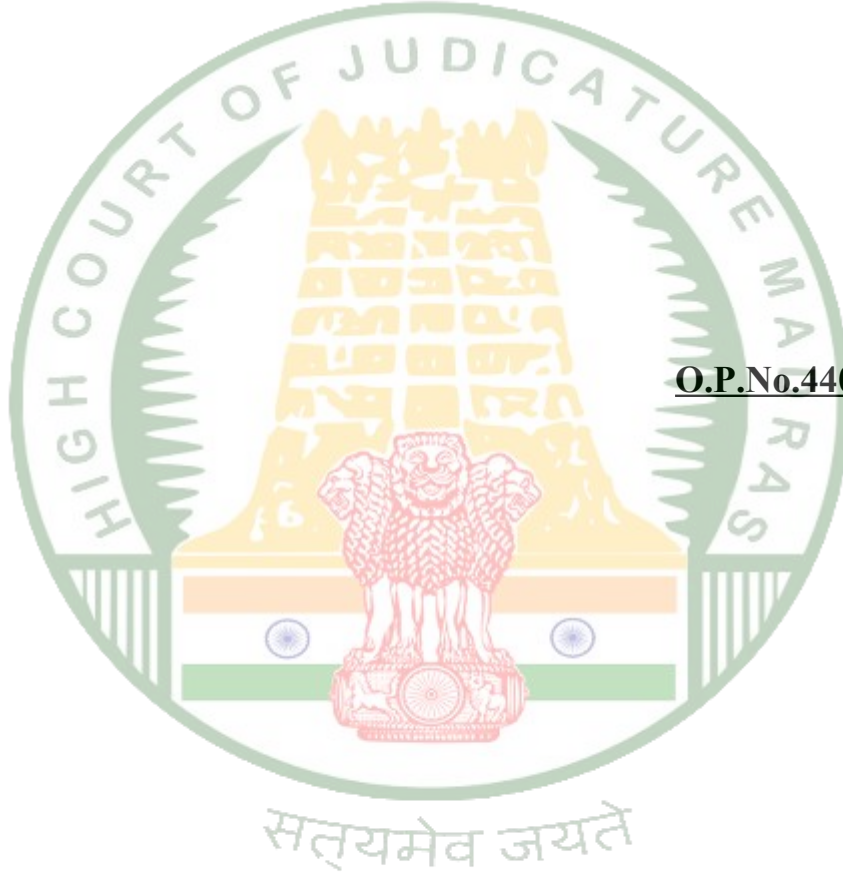
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