

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.T.ASHA

Original Petition No.570 of 2020
and
Original Application No.537 of 2020

B.Thiruselvan

...

Petitioner

Versus

1.M/s.Rahaa Associates Layout Private Ltd.,
Rep by its Directors
No.125 A1, Poonamallee High Road,
Varalakshmi Nagar, Maduravoyal,
Chennai - 600 095.

2.R.Boovarahan

3.B.Jayanthi

4.M.David Raj

5.D.Padmaja Bama

...

Respondents

Prayer: Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator to adjudicate and resolve the disputes through arbitral proceedings between the parties.

For Petitioner : Mr.B.Anand Johnson
for Mr.S.Namasivayam

For Respondents : Mr.C.Seethapathy for R1 to R3
Mr.J.Lawrence for R4 and R5

ORDER

The petitioner has filed this petition u/s.11(4) of the Arbitration and Conciliation Act, 1996 to refer the parties to Arbitration in respect of the disputes that had arisen in Memorandum of Understanding dated 19.09.2015.

2. Though, the Memorandum of Understanding was only between the petitioner and the 1st respondent, the petitioner has sought to implead the respondents 2 to 5 on the basis of the recitals contained in clause Nos. 3 and 4 of the Memorandum of Understanding.

3. It is the case of the petitioner that a sum of Rs.2,50,00,000/- (Rupees Two Crores and fifty Laksh only) had been given as a loan to the 1st respondent who had promised to return the same as Rs.5,00,00,000/- (Rupees Five Crores only).

4. The respondents on entering appearance has filed their counter in which apart from raising the issue of limitation, the respondents have also

contended that the petitioner has impleaded the respondents who are not parties to the Memorandum of Understanding. On this ground they would contend that the petition deserves to be dismissed.

5. The learned counsel for the applicant would submit that a mere perusal of the Memorandum of Understanding indicates that the amount has been disbursed to various persons who had been added as respondents 2 to 5 and that the respondent has not re-paid the amount as promised by him. Therefore, these persons have been added for bringing out the above fact. He would submit that the invocation of Arbitration is well within time.

6. The learned counsel appearing on behalf of the respondents apart from contending that the claim is barred by limitation had also stated that earlier Arbitrator had been appointed and the notice u/s.21 of the Arbitration and Conciliation Act was issued only to the 1st respondent, whereas, now the petitioner seeks to implead non-parties to the proceeding.

7. After hearing the arguments of the parties, this court had put across a suggestion that an Arbitrator would be appointed to resolve the dispute and the Arbitration shall be restricted only to the petitioner and the

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1st respondent. The respondents 2 to 5 shall not be parties to the Arbitral proceeding. Both the counsels have consented for the same.

8. Considering the fact that disputes have arisen between the parties and parties have agreed to arbitration as the dispute resolution mechanism, it is ordered as follows:

i) *Mr.S.Silambannan, Senior Advocate, residing at AL-193, First Street, 12th Main Road, Anna Nagar, Chennai - 600 040, Near Sundaram Medical Hospital, Contact No.98400 66919, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.*

ii) *The learned 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 learned Arbitrator is at liberty to fix his 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.*

9. The Original Petition is, accordingly, **allowed**, leaving the parties to bear their own costs. Considering the fact that the Arbitrator is appointed, the application is closed giving liberty to the applicant to move the Arbitral Tribunal.

11.02.2021

Speaking Order / Non-speaking Order
Index : Yes / No
Internet : Yes
dsa

To

Mr.S.Silambannan, Senior Advocate,
AL-193, First Street, 12th Main Road,
[Near Sundaram Medical Hospital]
Anna Nagar, Chennai - 600 040.

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O.P.No.570 of 2020

P.T.ASHA,J.

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