

**In the High Court of Judicature at Madras**

**Dated : 06.03.2015**

**Coram :**

**The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice**

**O.P.No.806 of 2012**

1.S.Siva

2.S.Vijayakannan

3.K.Subash

.. Petitioners

-VS-

1.R.Aravindan

2.N.Bhupesh

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the disputes that had arisen between the petitioners and the respondents.

For Petitioners : Mr.K.Rajasekaran

For Respondents : No appearance

\* \* \* \* \*

**O R D E R**

The first respondent is stated to be the owner of a vacant land measuring 2300 sq.ft. (as per document 2600 sq.ft.) comprised in Old Survey Nos. 80/3B and 80/4B part, Ram Nagar North Extension in L.P.D.M./DDTP No.270/73, C.No.6519/73 M.C.R. 3, 28<sup>th</sup> Main Road, now known as 7<sup>th</sup> Main Road bearing Plot No.5095/A situated at Madipakkam Village, Saidapet Taluk, now Sholinganallur Taluk, previously Chengalpet District, now Kancheepuram District.

2.It is the claim of the petitioners that the first respondent wanted to develop the property and for that purpose approached the petitioners. The understanding inter se the parties was reduced into a Joint Development Agreement dated 27.07.2008. The aforesaid Joint Development Agreement subsequently resulted in tripartite agreement also labelled as Joint Development Agreement dated 07.10.2010, in which the second respondent was brought into the picture. There was undisputedly delay in completion of the construction, but it is the case of the petitioners that time was not considered essence of the contract (9 months time was stipulated from the date of obtaining approval, i.e., 30.05.2011). The construction is stated to have been completed by the second respondent, but the plea is that the share which was allotted to the petitioners, has not been handed over to them nor the money's due.

3.The subsequent Joint Development Agreement dated 07.10.2010 contains arbitration clause 26, which reads as under :

"26.Any dispute / difference of opinion relating to this agreement shall be sorted out by arbitration in Chennai."

4.The petitioners sent a legal notice dated 25.10.2012 seeking to invoke the arbitration clause and to appoint a retired Judge of this Court as Arbitrator. This letter was replied through counsel by the second respondent on 02.11.2012 making a reference to the applications filed by the petitioners under section 9 of the Arbitration and Conciliation Act, 1996, and refusing to accept the Arbitrator proposed by the petitioners. Almost a similar reply was sent by the first respondent on 03.11.2012. Thus, there is no unanimity on the issue of who should be the Arbitrator, though the arbitration clause has not been disputed and the responses.

5.On a query as to what is the fate of the proceedings under section 9 of the said Act, the learned counsel for the petitioners expressed ignorance.

6.The respondents have not entered appearance despite service.

7.Be that as it may, the aforesaid pleadings and documents show that there is a written agreement inter se the parties containing arbitration clause and disputes have arisen, which have to be settled

through arbitration at Chennai. In any case, the decision under section 9 of the said Act could not influence the present proceedings under section 11 of the said Act.

8.I, thus, appoint **Mr.R.Muthukumaraswamy, Senior Advocate**, as the Sole Arbitrator, to enter upon the reference and 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. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondent not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

9.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)  
06.03.2015

sra

The Hon'ble Chief Justice

(sra)

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