

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.No.563 of 2020

M/s. Marina Holdings
Represented by its partner
Mr. Rajkumar Sethupathy,
Level 7 A, Capital Towers,
555, Anna Salai,
Teynampet,
Chennai- 18

...Petitioner

Vs

N. Ramasamy,
Proprietor, Sri Thenandal Films
No.8, 80 Feet Road,
Devar Garden,
Saligramam, Chennai- 600 093.

Also at
N. Ramasamy
Proprietor Sri Thenandal Films
No.19, Saraswathi Street,
Mahalingapuram, Chennai 600 034.

... Respondent

Prayer : Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 praying to

a) appoint a sole arbitrator in place of the erstwhile arbitrator in OP.No.1 of 2020 and resolve the disputes between the petitioner and

the respondent in terms of the Agreements dated 27.03.2019 read with Agreement dated 22.01.2018.

b) directing the respondent to pay the petitioner the costs of this petition.

For Petitioner : Mr. Murugan
For Respondent : Mr. S. Karthikaibalan

ORDER

The petitioner has moved this Court for appointing a sole Arbitrator in place of the erstwhile Arbitrator Mr.V. Bhiman, who had passed away on 14.10.2020.

2. The learned counsel for the petitioner would submit that the petitioner, who is in the business of extending financial assistance, had in the course of his business extended a loan to the respondent for the production of one of his films. Originally an Agreement dated 18.01.2017, was entered into between the petitioner and the respondent, in which, the respondent had admitted receipt of the loan of Rs.10 crores. Since the amounts had not been repaid, the agreements were renewed. However, on 31.10.2017, the respondent had only repaid a sum of Rs.2 crores 50 lakhs,

leaving a balance of Rs.7 crores 50 lakhs. The loan amounts were originally given by the partners in their individual capacity. Thereafter, the loan was made over to the petitioner/firm and an agreement dated 22.01.2018 was executed between the petitioner/firm and the respondent, wherein the respondent had acknowledged that they are liable to pay to the tune of Rs.7,50,00,000/- and had also undertaken to repay the same with interest at 18 % per annum. Apart from the loan, the respondent had also deposited the title deeds of his property and a separate agreement in this regard was entered in between the parties. Once again the respondent failed to pay the said sum and another Agreement dated 27.03.2019 was executed, whereunder the respondent had undertaken to repay the said amounts and had also issued two cheques towards interest and the principle amount of Rs.7 crores 50 lakhs. However the respondent had not honoured the payment and the cheques were returned dishonoured.

3. The learned counsel would submit that under the Agreement between the parties, the parties had agreed to refer the dispute to a named

Arbitrator namely Shir V. Bhiman. Since disputes had arisen between the parties, the petitioner had nominated Mr.V.Bhiman as the Arbitrator, after invoking the Arbitration clause vide their notice dated 19.07.2019.

4. The learned counsel would submit that the petitioner had filed a Claim Petition and had also filed an application under Section 17 for a direction to the respondent to furnish security and the same was granted. While the matter was pending, the learned Arbitrator had passed away.

5. The learned counsel would also draw the attention of this Court to the fact that before instituting the arbitration proceeding, the petitioner had moved petitions under Section 9 and after hearing the parties, orders had been passed. In fact, by order dated 12.03.2020 in A.No.5210 of 2019, this Court had granted an interim order of attachment, which was to remain in force till three months and the petitioner was directed to initiate arbitration proceedings, failing which the interim order was to automatically stand vacated. Within the said time, the petitioner has moved the arbitral

proceedings and the Claim Petition had been filed on 10.06.2020. Therefore, this Court should appoint another person as arbitrator, in the place of the deceased arbitrator.

6. This Petition was vehemently opposed by the respondent, who would contend that the agreement, which was the basis for invoking jurisdiction before this Court is an unregistered one and therefore petition deserves to be dismissed. He would rely upon the Judgment in “**Garware Wall Ropers Ltd. vs Coastal Marine Constructions** reported in [2019 9 SCC page 209]”, wherein the instrument was not properly stamped that de hors an objection being raised in this behalf or not, the document has to be empowered and dealt with in the manner under Section 38 of the Stamp Act.

7. He would argue that the document in question namely the agreement dated 27.03.2019 refers to the deposit of title deeds and this agreement which is only a sequel to the earlier agreement dated 22.01.2018, which also refers to the memorandum of deposit of title deeds dated

17.10.2017. Since the agreement includes a mortgage, the same has to be compulsorily registered and therefore without the documents being so registered, no orders can be passed in the petitions and the very initiation of arbitral proceedings is not maintainable.

8. Heard the counsel and perused the papers.

9. From a perusal of the two agreements, it is clear that the reference to the memorandum of deposit of title deeds in the agreement is nothing but a narration simplicitor of the various agreements that have been entered into between the parties. The document relates to the borrowing and the undertaking to repay the money. The memorandum is included in another document dated 17.07.2017 as communicated in the agreement, based on which, the present Petition is filed. Therefore, the learned counsel for the respondent, contention that the decision in the Judgement in ***Garware Wall Ropers Ltd. vs Coastal Marine Constructions***, squarely applies to the facts of the instant case fails. That apart, the respondent has filed a Section 9

application without raising such a defense and has also appeared before the erstwhile arbitrator. In these circumstances, I do not find any merits in the argument put forward on behalf of the respondent.

10. Consequently, I appoint Mr. R. Parthasarathy, Advocate, as the Arbitrator.

11. Accordingly, it is ordered as follows:

(i) Mr. R. Parthasarathy, Advocate, #8, 8th Street, Dr. Radhakrishnan Road, Mylapore, Chennai - 600 004, Phone no- 9840027478, email id- partha239@gmail.com, 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.

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

18.02.2021

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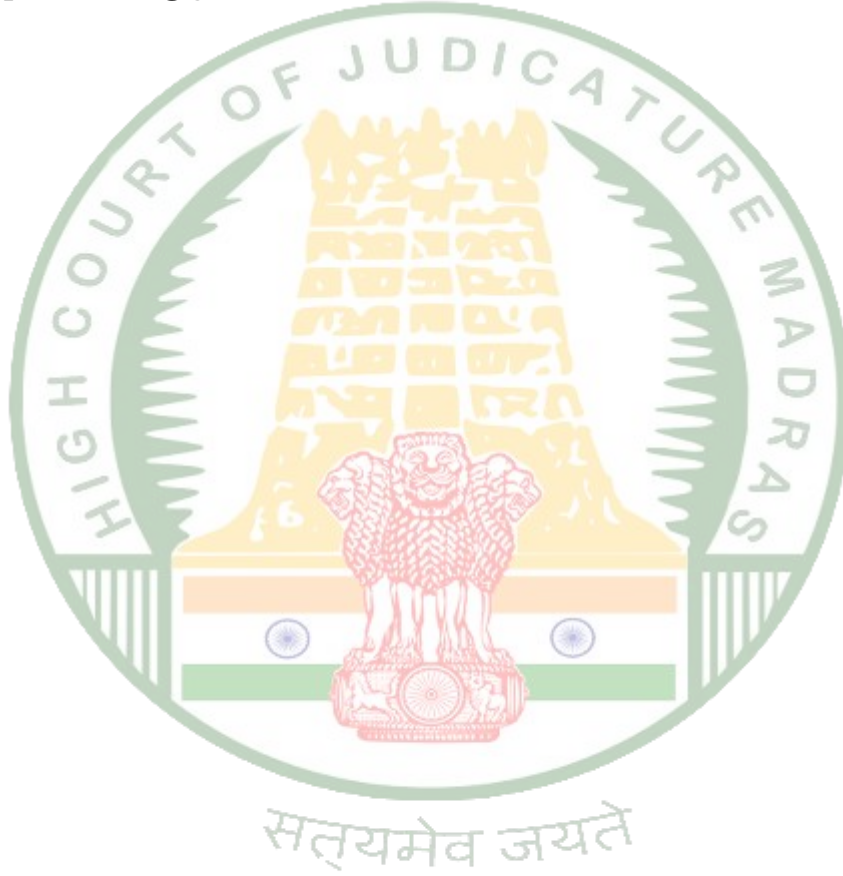
Index : Yes/No

Speaking order/non-speaking order



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