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Arb.O.P. (Com.Div.) No.29 of 2022 and O.A.No.65 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2022

PRONOUNCED ON : 30.09.2022

CORAM

THE HON'BLE MR. JUSTICE G.CHANDRASEKHARAN

Arb.O.P. (Com.Div.) No.29 of 2022 and
O.A.No.65 of 2022

M/s.Lokaa Housing Private Limited,
Rep.by its Director Mr.Santhosh Sharma,
having their registered office at
Lokaa House, No.14, 2nd Main Road,
Kannappa Nagar Extension,
Thiruvanmiyur, Chennai – 600 041.

...Petitioner

Vs.

1.Mr.Omprakash Agarwal,
Managing Director
M/s.Petroplast Industries Limited,
G- 1125, 1street, 10th main road,
Anna Nagar West, Chennai – 600 040.

2.M/s.A.K.S.Housing Development Company Private Limited,
Rep.by its Managing Director,
Mr.Anand Seshadri,
Having office at AKS Dhruva, F-1, No.12 (Old No.17)
Balaji Avenue 1st Street,
T.Nagar, Chennai 600 017.

3.V.Kumaravel

...Respondents



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Prayer: Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to decide the disputes between the parties that have arisen under the Agreement dated 01.12.2019 and the supplemental agreement dated 02.12.2019 as per the provisions of Arbitration and Conciliation Act 1996.

For Petitioner : Mr.T.V.Ramanujam for Ms.R.Ramya

For Respondent No.1 : Mr.T.Mohan for K.Surendar

ORDER

Arb.O.P.(Com.Div.) No.29 of 2022 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 in the matter of agreement dated 01.12.2019 read with Supplemental Agreement dated 02.12.2019, for appointment of sole Arbitrator to decide the issues between the parties that have been arisen under these agreements.

2.Arb.O.A.(Comm.Div) No.65 of 2022 is filed under Section 9 of the Arbitration and Conciliation Act, 1996 in the matter of agreement dated 01.12.2019 read with Supplemental Agreement dated 02.12.2019, for an order of interim injunction restraining the respondents, their men,



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agents, servants and any one claiming under them from in any way alienating or encumbering the properties morefully described in the schedule pending disposal of the arbitral proceedings till it reaches its finality in the manner known to law.

3.In both cases, applicant/petitioner and respondents are same persons and the issues involved are also the same, except the prayer. The case of the applicant/petitioner is that it entered into an agreement dated 01.12.2019 with the respondents for the purchase of the schedule property. The total sale consideration of the property is Rs.105 crores and the total extent of land is 4.44 acres. The applicant/petitioner paid a sum of Rs.22,75,00,000/- as advance on 01.12.2019. It was agreed that the balance sale consideration shall be paid at the time of registration of the schedule property. The first respondent represented that there were certain litigations pending with respect to certain portion of the schedule property, but he has not clearly stated what are all the issues except the pendency of the civil suit in C.S.No.161 of 2014 before this Court. Thereafter, the applicant/petitioner identified additional issues and in this



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regard, a supplemental agreement dated 02.12.2019 was executed. On 02.12.2019, the applicant/petitioner paid a sum of Rs.1,55,20,283/-. The first respondent handed over all the original title deeds in respect of the schedule property. The applicant/petitioner incurred a sum of Rs.1,20,00,000/- as expenses towards various expenses in connection with the said transactions. It had also made arrangement with Primal Group and Kotak Investment Advisors Limited for a loan of Rs.120 crores. The applicant/petitioner is always ready and willing to perform its part of the obligation in the agreements dated 01.12.2019 and 02.12.2019. It called upon the respondents through a legal notice dated 15.10.2021 to comply with the terms of the agreements. The first respondent issued a reply dated 25.10.2021 making false and frivolous allegations. The applicant issued a rejoinder dated 03.11.2021. It was returned with an endorsement “left” by the first respondent. Again rejoinder was sent to the first respondent on 08.11.2021 and the same was received. The first respondent's counsel sent a reply to the rejoinder on 16.11.2021. The second respondent has received notice, but not replied till date. The rejoinder dated 03.11.2021 and the legal notice



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dated 02.12.2021 were sent to the third respondent, but they have been returned with an endorsement “no such person”. Clause 9 of the agreement dated 01.12.2019 allows the parties to establish their rights through arbitration proceedings if any difference of opinion occurs. The applicant/petitioner had also issued a legal notice, dated 02.12.2021, calling upon the respondents to agree to refer the matter for arbitration, suggesting three names for appointing a sole arbitrator. Notice was received by the respondents 1 and 2. But the notice sent to third respondent was returned as “No such person”. The respondents 1 and 2 have not sent any reply. In the said circumstances, both these applications are filed for the reliefs aforestated.

4.The first respondent filed a counter in Arb.O.P.(Com.Div.) No.29 of 2022 and submitted that this counter is adopted in Arb.O.A.(Comm.Div) No.65 of 2022. The case of the first respondent is that the petition in Arb.O.P.(Com.Div.) No.29 of 2022 is filed claiming that the dispute is a commercial dispute. Admitted fact is that the dispute arises out of an agreement relating to a vacant land measuring an extent



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of about 4.44 acres. It is not the case of the applicant/petitioner that the said land has been used for any trade or commerce. Therefore, it cannot be stated that the dispute would fall within the ambit of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. This application lacks inherent requirement of a valid arbitration agreement as required under Section 7 of the Act. Clause 9 of the agreement dated 01.12.2019 refers only that the parties are free to resort to arbitration proceedings. There is no binding agreement to submit to arbitration as stipulated under Section 7 of the Act. Thus, there is no valid arbitration agreement between the parties for invoking the provisions of the Arbitration and Conciliation Act, 1996. The first respondent entered into agreements dated 29.06.2010 and 30.06.2010 with the second and third respondents for the purchase of 444 cents. Pursuant to payment of the entire sale consideration, vacant possession of the said land was delivered to him. The applicant/petitioner is known to him through other property transactions. The applicant/petitioner is well aware of the litigations and other issues in respect of the suit lands and wanted to purchase the suit lands at a throw away price. After mutual negotiations, the sale



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consideration was fixed at Rs.105 crores, which is far below the actual market value. The sale agreement dated 01.12.2019 was executed and the applicant/petitioner paid a sum of Rs.22,75,00,000/- as advance. He agreed to pay a sum of Rs.12,25,00,000/- on or before 31.12.2019 and Rs.70,00,00,000/- on or before 30.01.2020. Settling of disputes was not a condition precedent for paying the sale consideration. Time fixed in the sale agreement dated 01.12.2019 is the essence of the agreement. The applicant/petitioner has breached the explicit terms of the agreement. The first respondent has not executed the supplemental agreement dated 02.12.2019. The agreement dated 02.12.2019 is fabricated by the applicant/petitioner by misusing the blank signed papers in breach of trust and it is an act of forgery. He has not received Rs.1,55,20,283/- from the applicant/petitioner on 02.12.2019. Even as per the terms of the forged agreement dated 02.12.2019, the applicant/petitioner has not paid Rs.5 crores on or before 30.12.2019. For the above reasons, this application/petition has no merits and is liable to be dismissed.

5.Points for consideration



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(i) Whether the dispute involved in this case is a commercial dispute?

(ii) Whether there is a valid arbitration agreement between the parties?

(iii) Whether the petitioner is entitled for appointment of the sole arbitrator?

(iv) Whether the petitioner is entitled for interim injunction as prayed for?

6.Point Nos.1 to 4.

The learned counsel for the applicant/petitioner submitted that though the agreements between the parties relate to sale of immovable property, there is an option given to the parties to resort to arbitration proceedings at Chennai jurisdiction to establish their rights in case of difference of opinion occurs with regard to terms of the agreement. Clause 9 of the agreement dated 01.12.2019 is the arbitration agreement and it gives a clear right to either of the parties to resolve their issues through arbitration proceedings. The sale of immovable properties i.e., lands to an extent of 4.44 acres could not take place for the reason that there are certain encumbrances over the suit property and the



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respondents, despite the agreement entered on 01.12.2019 followed by the supplemental agreement dated 02.12.2019 executed by the first respondent, have not come forward to clear the encumbrances over the schedule property and thus, violated the terms and conditions of the contract leading to breach of contract by the respondents. Therefore, the applicant/petitioner issued a notice dated 02.12.2021 to the respondents requesting them to choose any one of the three arbitrators suggested as the sole Arbitrator. There was no response to the notice. Thus, he prayed for appointment of sole Arbitrator and for grant of interim injunction as prayed for in Arb.O.A. (Com.Div)No.65 of 2022.

7.Per contra, the learned counsel for the first respondent submitted that the agreement dated 01.12.2019 relates to an agreement to sell the land to an extent of 4.44 acres. There is no indication whatsoever in the agreement or in any other documents that this land is used for the purpose of trade or commerce. Therefore, it cannot be considered as a commercial dispute subjecting to the jurisdiction of the Commercial Courts Act 2015. Clause 9 of the agreement dated 01.12.2019 gives only



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an option to resort to arbitration proceedings. Technically, it is not an arbitration agreement at all. Clause 9 does not conform itself to the definition of the arbitration agreement as per Section 7 of the Arbitration and Conciliation Act. Therefore, it is not necessary to refer the dispute to arbitration. In support of his submissions, the learned counsel for the respondents pressed into service the following judgments:

- (1) Mahanadi Coalfields Ltd & Anr. Vs. M/s.IVRCL AMR Joint Venture, reported in 2022 Live Law (SC) 657***
- (2) Ambalal Sarabhai Enterprises Ltd., Vs. K.S.Infraspac LLP and ors reported in (2020) 15 SCC 585***
- (3) Wellington Associates Limited Vs. Kirit Mehta reported in (2000) 4 SCC 272***
- (4) Jagdish Chander Vs.Ramesh Chander and Ors. reported in (2007) 5 SCC 719.***

8.Considered the rival submissions and perused the records.



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9. Section 2(1) (b) r/w Section 7 of the Arbitration and Conciliation

Act, 1996 defines what is an arbitration agreement, which reads as follows:

7. Arbitration agreement – (1) *In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in -

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is



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alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Arbitration agreement does not confine only to commercial dispute. It includes an agreement to arbitrate all or certain disputes in respect of a defined legal relationship, whether contractual or not. The main issue involved in this case is whether there is a valid arbitration agreement; whether an arbitrator has to be appointed and whether interim injunction as claimed by the petitioner can be granted. If the disputes between the parties is a commercial dispute, then the dispute must go to Commercial Division. If the dispute is not a commercial dispute, then suit has to be laid only before the Civil Court. As of now, it appears that there is no suit instituted for enforcing the right under the sale agreements dated 01.12.2019 and 02.12.2019. The sale agreement dated 01.12.2019 was entered into between the first respondent Omprakash Agarwal as vendor, the applicant as the purchaser and the second and



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third respondents acting as confirming parties 1 and 2 respectively. The applicant is a housing development company, namely, A.K.S.Housing Development Company Private Limited. The terms of the agreement reads that the purchaser intends to purchase this property for the purpose of getting approvals from Government bodies and for obtaining permission to develop the property and the vendor covenants to handover the possession of the land along with all the title deeds and related documents of the schedule mentioned property. The purchaser is also given permission to erect boards, place advertisements, survey and carry out all necessary civil work to proceed with the development of the entire schedule mentioned property, appoint security guards at appropriate time, with the prior permission of the vendor. These terms of the agreement makes it quite obvious that the purchaser intends to purchase the schedule property, admeasuring 444 cents for developing after getting approvals from Government bodies and construction of the building. Thus, it is obvious that the land is being purchased for using it for trade or commerce. In the judgment relied by the learned counsel for the respondents reported in ***(2020) 15 SCC 585 Ambalal Sarabhai***



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Enterprises Ltd. Vs. K.S. Infraspace LLP and Ors., the suit was filed for execution of the mortgage deed that was in the nature of specific performance of the terms of memorandum of understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, it was held that the dispute involved was not a commercial dispute. However, in this case, as said earlier, the land is purchased for the development of the land into building. Though it is not specifically stated in the agreement that the land is being purchased for the use of trade or commerce, we can gather from the terms of the agreement that the land is sought to be purchased for the use of trade or commerce. In this view of the matter, this Court finds that the dispute involved between the parties are commercial dispute as defined under Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015.

10. The next question that has to be considered is whether Clause 9 of the sale agreement, dated 01.12.2019 is an arbitration agreement.



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Clause 9 of the sale agreement, dated 01.12.2019 reads as follows:

9) The parties herein covenant that there shall not be any difference of opinion and assures to maintain decorum with respect to this Agreement and unpredictably if any such occurs the parties are free to resort it through Arbitration proceedings at Chennai Jurisdiction to establish their rights.

11.The contention of the learned counsel for the first respondent is that there is no clear and unequivocal expression to enter into arbitration agreement and subject the parties to the award of the arbitral tribunal. This clause only gives an option to refer the dispute to arbitration when difference of opinion arises between the parties. Agreement to refer the future disputes to arbitration cannot be considered as arbitration agreement.

12.In the judgment reported in **(2000) 4 SCC 272 Wellington Associates Ltd. v. Kirit Mehta**, it is observed as follows:



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21. *Does clause 5 amount to an arbitration clause as defined in Section 2(b) read with Section 7? I may here state that in most arbitration clauses, the words normally used are that “disputes shall be referred to arbitration”. But in the case before me, the words used are “may be referred”.*

22. *It is contended for the petitioner that the word “may” in clause 5 has to be construed as “shall”. According to the petitioner's counsel, that is the true intention of the parties. The question then is as to what is the intention of the parties. The parties, in my view, used the words “may” not without reason. If one looks at the fact that clause 4 precedes clause 5, one can see that under clause 4 parties desired that in case of disputes, the civil courts at Bombay are to be approached by way of a suit. Then follows clause 5 with the words “it is also agreed” that the dispute “may” be referred to arbitration implying that parties need not necessarily go to the civil court by way of suit but can also go before an arbitrator. Thus, clause 5 is merely an enabling provision as contended by the respondents. I may also state that in cases where there is a sole arbitration clause couched in mandatory*



language, it is not preceded by a clause like clause 4 which discloses a general intention of the parties to go before a civil court by way of suit. Thus, reading clause 4 and clause 5 together, I am of the view that it is not the intention of the parties that arbitration is to be the sole remedy. It appears that the parties agreed that they can “also” go to arbitration in case the aggrieved party does not wish to go to a civil court by way of a suit. But in that event, obviously, fresh consent to go to arbitration is necessary. Further, in the present case, the same clause 5, so far as the venue of arbitration is concerned, uses the word “shall”. The parties, in my view, must be deemed to have used the words “may” and “shall” at different places, after due deliberation.

.....

25. Suffice it to say, that the words “may be referred” used in clause 5, read with clause 4, lead me to the conclusion that clause 5 is not a firm or mandatory arbitration clause and in my view, it postulates a fresh agreement between the parties that they will to go to arbitration. Point 2 is decided accordingly against the petitioner.



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13.In the judgment reported in **(2007) 5 SCC 719 Jagdish**

Chander v. Ramesh Chander, it is observed as follows:

8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in K.K. Modi v. K.N. Modi [(1998) 3 SCC 573] , Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] and Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. [(2003) 7 SCC 418] In State of Orissa v. Damodar Das [(1996) 2 SCC 216] this Court held that a clause in a contract can be construed as an “arbitration agreement” only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:

(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private



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tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) Even if the words “arbitration” and “Arbitral Tribunal (or arbitrator)” are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an



impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.



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(iv) But mere use of the word “arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as “parties can, if they so desire, refer their disputes to arbitration” or “in the event of any dispute, the parties may also agree to refer the same to arbitration” or “if any disputes arise between the parties, they should consider settlement by arbitration” in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that “if the parties so decide, the disputes shall be referred to arbitration” or “any disputes between parties, if they so agree, shall be referred to arbitration” is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or



contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.

9. Para 16 of the partnership deed provides that if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided by the parties or shall be referred to arbitration if the parties so determine. If the clause had merely said that in the event of disputes arising between the parties, they “shall be referred to arbitration”, it would have been an arbitration agreement. But the use of the words “shall be referred for arbitration if the parties so determine” completely changes the complexion of the provision. The expression “determine” indicates that the parties are required to reach a decision by application of mind. Therefore, when clause 16 uses the words “the dispute shall be referred for arbitration if the parties so determine”, it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause requires the consent of parties before the disputes can



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be referred to arbitration. The main attribute of an arbitration agreement, namely, consensus ad idem to refer the disputes to arbitration is missing in clause 16 relating to settlement of disputes. Therefore it is not an arbitration agreement, as defined under Section 7 of the Act. In the absence of an arbitration agreement, the question of exercising power under Section 11 of the Act to appoint an arbitrator does not arise.

14.The learned counsel for the respondents also placed before this Court, the judgment reported in **2022 livelaw (SC) 657 Mahanadi Coalfields Ltd & Anr.Vs. M/s.IVRCL Amr Joint venture** for reiterating the propositions laid down in the judgment reported in **(2007) 5 SCC 719 Jagdish Chander v. Ramesh Chander**.

15.We have already seen that the arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It means that the arbitration agreement may relate to disputes which had already arisen or which will arise in future. Arbitration agreement may be in the form of



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an arbitration clause in a contract or in the form of a separate agreement.

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An arbitration agreement shall be in writing. In the case before hand, it is claimed by the petitioner that clause 9 of the sale agreement is an arbitration agreement between the parties. We have seen that as per Section 7 (2) of the Arbitration and Conciliation Act, 1996, an arbitration agreement may be in the form of an arbitration clause in a contract and it shall be in writing. Both these conditions are satisfied in clause 9 of the sale agreement. As per this clause, the parties covenant that unpredictably if any such (dispute) occurs, the parties are free to resort it through Arbitration proceedings at Chennai Jurisdiction to establish their rights. This clause makes it clear that the parties agree to resolve any dispute that occurs unpredictably in the course of implementing the terms of the agreement, through arbitration proceedings at Chennai Jurisdiction. In other words, any future dispute that may arise will be referred to arbitration proceedings at Chennai Jurisdiction to establish the rights of the respective parties. It is permissible as per Section 7 (1) of the Arbitration and Conciliation Act, 1996. There is no dispute in this case that the parties have entered into a contract of sale agreement and in



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the course of implementing the terms of sale agreement, certain difference of opinion arose subsequent to the execution of the sale agreement. Thus, this Court is of the considered view that the clause 9 of the sale agreement conforms to the definition of arbitration agreement as defined in Section 2(1) (b) r/w Section 7 of the Arbitration and Conciliation Act, 1996 in all fours.

16.Relying on the judgment reported in **(2000) 4 SCC 272 Wellington Associates Limited Vs.Kirit Mehta**, the learned counsel for the respondents submitted that an agreement to refer the dispute to arbitration cannot be considered as a binding arbitration agreement. In the said judgment, while interpreting clauses 4 and 5 of the two agreements, dated 15.08.95, it was decided that the words “may be referred” used in clause 5 read with clause 4 led to the conclusion that clause 5 is not a confirmed or mandatory arbitration clause and it postulates a fresh agreement between the parties that they will go to arbitration agreements. For a better understanding, the said two clauses in para 9 are reproduced hereunder:



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9. Before referring to the said sections, I shall refer to the relevant clauses 4 and 5 in the two agreements dated 15-8-1995. They read as follows:

Clause 4: It is hereby agreed that, if any dispute arises in connection with these presents, only courts in Bombay would have jurisdiction to try and determine the suit and the parties hereto submit themselves to the exclusive jurisdiction of the courts in Bombay.

Clause 5: It is also agreed by and between the parties that any dispute or differences arising in connection with these presents may be referred to arbitration in pursuance of the Arbitration Act, 1940 by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of arbitration shall be at Bombay.”

17.As rightly stated in clause 5, it was agreed by the parties that the dispute may be referred to arbitration. However, in the case before hand, clause 9 of the agreement reads that the parties are free to resort it through arbitration proceedings. The dictionary meaning of the word 'free' is “unconstrained”. Thus, both parties are given unconstrained right to resolve their dispute through arbitration proceedings at Chennai. Arbitration proceedings means the proceedings held before the Arbitral



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Tribunal till the passing of award. The other judgment relied by the learned counsel for the respondents reported in **(2007) 5 SCC 719 Jagdish Chander v. Ramesh Chander**, set out the well settled principles with regard to what constitutes an arbitration agreement. This Court is of the considered view that clause 9 of the sale agreement largely conforms to the principles required for constituting an arbitration agreement. Therefore, the judgment relied by the learned counsel for the respondents are not useful to advance the case of the respondents. In the case of **Vidya Drolia and others Vs. Durga Trading Corporation** reported in **(2021) 2 SCC 1**, on 14.12.2020, the Hon'ble Supreme Court has observed as follows:

75. Before we part, the conclusions reached, with respect to question no. 1, are:

a. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

b. Usually, subject matter arbitrability cannot be decided at the stage of Sections 8 or 11 of the Act, unless it's a clear case of deadwood.



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c. The Court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of nonexistence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

d. The Court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above, i.e., 'when in doubt, do refer'.

e. The scope of the Court to examine the prima facie validity of an arbitration agreement includes only: a. Whether the arbitration agreement was in writing? or b. Whether the arbitration agreement was contained in exchange of letters, telecommunication etc? c. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

d. On rare occasions, whether the subject matter of dispute is arbitrable?



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18.Now the position is to refer the dispute to arbitration when there is an arbitration agreement, even when there is a doubt regarding the validity of the arbitration agreement, if the validity of the arbitration agreement cannot be determined on a prima facie basis. However, this Court finds, on consideration of clause 9 of the sale agreement and position of law, that there is a valid arbitration agreement between the parties and therefore, this Court finds merits in the claim of the petitioner for appointing a sole arbitrator and for ordering interim injunction restraining the respondents, their men, agents, servants and any one claiming under them from in any way alienating or encumbering the schedule of properties till the arbitral proceedings reaches its finality. Thus, the Point Nos.1 to 4 are answered in the affirmative.

19.In the result,

(i) Hon'ble Mr.Justice K.Ravichandrabaabu, former Judge of High Court of Madras at Flat 1D, crescent castle apartment, 13, second crescent park road, Gandhi nagar, Adyar, Chennai 600020, (Mob:9498033336, e-mail: rpkrcbj@gmail.com) is appointed as Sole



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Arbitrator.

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(ii) Hon'ble Sole Arbitrator is requested to enter upon reference qua agreements dated 01.12.2019 and 02.12.2019 between the petitioner and respondents, adjudicate upon the arbitrable disputes that have arisen between the petitioner and respondents and render an award by holding sittings at 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) in accordance with Madras High Court Arbitration Proceedings Rules 2017.

(iii) Fee of Hon'ble Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

(iv) There shall be an order of interim injunction restraining the respondents, their men, agents, servants and any one claiming under them from in any way alienating or encumbering the schedule of properties till the arbitral proceedings reaches its finality.



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21. Accordingly, Arb.O.P.(Com.Div.)No.29 of 2022 and O.A.No.65

of 2022 are allowed. No costs.

sli

30.09.2022

Note: Registry is directed to communicate a copy of this order to

1. The Hon'ble Mr. Justice K. Ravichandrababu,
former Judge of High Court of Madras,
Flat 1D, crescent castle apartment,
13, second crescent park road, Gandhi nagar,
Adyar, Chennai 600020.
(Mob: 9498033336, e-mail: rpkrbj@gmail.com)

2. The Director,
Tamil Nadu Mediation & Conciliation
Centre-cum-Ex-Officio Member,
Madras High Court Arbitration Centre,
Chennai – 104.

G.CHANDRASEKHARAN, J.



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Pre-Delivery Order in
Arb.O.P. (Com.Div.) No.29 of 2022
and
O.A.No.65 of 2022

30.09.2022