



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 31st DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

O.P.No.79 of 2021

and

A.Nos.2925 & 4198 of 2021

O.P.No.79 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of Agreement to sale
dated 30.04.2014 and Agreement
for Construction dated 30.04.2014
between M/s.Ankur Khusal
Construction LLP and
Mr.M.Muthuramalingam

M/s.Ankur Khusal Constructions LLP
Represented by one of its partner
Mr.Siddharth N Mehar
New No.49, Old No.25
Barnaby Road, Kilpauk
Chennai-600 010.

... Petitioner/Applicant
(in A.No.4198 of 2021)

VS.

Mr.M.Muthuramalingam
S/o.M.Marimuthu
W-109, 15th Street
III Avenue, Anna Nagar West Extn.
Chennai-600 101.

... Respondent
(in A.No.4198 of 2021)

Original Petition praying that this Hon'ble Court be pleased to:-



sell dated 30.04.2014 and agreement for construction dated 30.04.2014 entered between petitioner and respondent and to adjudicate the disputes between the petitioner and the respondent in terms thereof.

(b) directing the respondent to pay the cost of this petition.

A.No.4198 of 2021

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to visit the respondent and file status report about the health of the respondent.

A.No.2925 of 2021

M/s.Ankur Khusal Constructions LLP
Represented by one of its partner
Mr.Siddharth N Mehar
New No.49, Old No.25
Barnaby Road, Kilpauk
Chennai-600 010.

... Petitioner/Applicant

vs.

1. Mr.M.Muthuramalingam
S/o.M.Marimuthu
W-109, 15th Street
III Avenue, Anna Nagar West Extn.
Chennai-600 101.

... Respondent/1st Respondent

2. Mr.M.Muthulakshmi
D/o.M.Marimuthu
W-109, 15th Street,
III Avenue, Anna Nagar West Extn.
Chennai 600 101.

...Proposed 2nd Respondent

Application praying that this Hon'ble Court be pleased to implead sister



of 1st Respondent as Proposed 2nd Respondent as next kin and guardian in OP No.79 of 2021.

This Original Petition along with these applications coming on this day before this court for hearing in the presence of Mr.Jayesh B.Dolia of M/s.Aiyar ad Dolia assisted by Mr.V.P.Mohamed Moin Advocates for the Petitioner in O.P.No.79 of 2021 and for the applicant in A.Nos.2925 & 4198 of 2021 and upon reading the petition and the Affidavit of Siddharth N Maher filed in O.P.No.79 of 2021 and the Judges Summons and the Affidavit of Siddharth N Maher filed in A.Nos.2925 & 4198 of 2021 and

it is ordered as follows :-

That Mr.Adarsh Subramanian (Enrol.No.2133/2016) Advocate, having office at No.20, Madhumalathi, Seethammal Road, Seethammal Colony, Alwarpet, Chennai-600 018, Mobile No.:8754400961, Email-ID : adarsh@aklawchambers.com, be and is hereby appointed as the Sole Arbitrator.

2. That the Learned Sole Arbitrator appointed herein be and is hereby requested to enter upon reference qua arbitrable disputes that have arisen from and out of agreement to sell, agreement for construction, both dated 30.04.2014 and adjudicate the *lis*.

3. That the sole Arbitrator appointed herein shall be at liberty to adopt procedures, measures and make orders deemed appropriate resorting to any



procedure in any other Statute including Mental Healthcare Act, 2017 for resolving the situation qua condition of sole respondent who is said to be in a state of comatose owing to an unfortunate road accident.

4. That the Arbitration proceedings shall be in accordance with the Madras High Court Arbitration Proceedings Rules 2017.

5. That the fees of the Learned Arbitrator appointed herein shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

6. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 31st DAY OF MARCH 2022.

Sd./-

ASSISTANT REGISTRAR (Comm Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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07.04.2022

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O.P.No.79 of 2021
and
A.Nos.2925 & 4198 of 2021

ORDER

DATED: 31.03.2022

THE HON'BLE MR. JUSTICE
M.SUNDAR

FOR APPROVAL : 08.03.2022

APPROVED ON : 11.04.2022

Copy to :

1. Mr.Adarsh Subramanian
(Enrol.No.2133/2016)
Advocate/Sole Arbitrator,
having office at No.20, Madhumalathi,
Seethammal Road, Seethammal Colony,
Alwarpet, Chennai-600 018,
Mobile No.:8754400961
Email-ID : adarsh@aklawchambers.com



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

O.P.No.79 of 2021

and

A.Nos.2925 & 4198 of 2021

M/s.Ankur Khusal Constructions LLP
Represented by one of its partner
Mr.Siddharth N Mehar
New No.49, Old No.25
Barnaby Road, Kilpauk
Chennai-600 010.

... Petitioner

VS.

M.Muthuramalingam
S/o.M.Marimuthu
W-109, 15th Street
III Avenue, Anna Nagar West Extn.
Chennai-600 101.

... Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 r/w Clause 5 of the Appointment of Arbitrator's Scheme by the Chief Justice of Madras High Court, Scheme, 1996, praying to

(a) appoint an Arbitrator for the respondent in terms of agreement to sell dated 30.04.2014 and agreement for construction dated 30.04.2014



between the petitioner and the respondent in terms thereof;

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(b) directing the respondent to pay the cost of this petition;

For Petitioner : Mr.Jayesh B. Dolia
of M/s.Aiyar and Dolia
assisted by
Mr.V.P.Mohamed Moin

COMMON ORDER

This common order will dispose of captioned original petition i.e., 'O.P.No.79 of 2021' [hereinafter 'main OP' for the sake of convenience and clarity] and two captioned applications thereat.

2. Captioned main OP has been presented in this Court on 19.01.2021 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with a prayer for appointment of an Arbitrator.

3. Suffice to say that the captioned main OP is predicated on arbitration clauses in agreement to sell and agreement for construction, both dated 30.04.2014 being agreements between petitioner and respondent.

4. Proceedings made by one of Hon'ble predecessor Judges on



03.02.2021 and 25.02.2021 read as follows:

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Proceedings dated 03.02.2021:

'Notice to the respondent returnable by 25.02.2021. Private notice is also permitted.'

Proceedings dated 25.02.2021:

'In their petition, the petitioner has stated as follows:

" 6. The petitioner states that sister of the respondent, approached them and informed that the respondent, had met with an accident in 2016 and he is severely injured and he has been in Coma since then and his father Mr.M.Marimuthu, has also passed away recently. The petitioner states that they are saddened to know about the health condition of the respondent and as a humanitarian gesture they have decided not to forfeit the amount and to return the amount after deducting the registration charges for cancelling the agreement and legal charges arising thereof after selling the said flat to third party accordingly they send a legal notice through their counsel on 29.11.2020 to come forward and cancel the Agreement for construction and a copy of the said notice was also sent to the Guardian of the respondent to do the needful failing which arbitration will be initiated though the said notice was also acknowledged but there is no reply from the respondent till date. "

2. This indicates that the respondent in the OP will not be in a condition to either take notice or proceed with in the matter.

3. Considering the fact that he is in a comatose state, the petitioner is therefore permitted to serve the sister of the respondent who had approached them.

4. When entering appearance, she shall produce necessary documents to show that the respondent is incapacitated and a comatose patient and as such the respondent is not in a position to



Deb Burman reported in **(2019) 8 SCC 714**. In **Mayavati Trading** case law, the relevant paragraph is paragraph No.10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

8. Aforementioned paragraph No.10 of **Mayavati Trading** case law takes this order to **Duro Felguera** principle i.e., **M/s.Duro Felguera S.A. Vs M/s. Gangavaram Port Limited** reported in **2017 (9) SCC 729**, relevant paragraphs in **Duro Felguera** case law are paragraph Nos.47, 59 and the same read as follows:

'47. What is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment") with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.



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59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. and Boghara Polyfab. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.'

9. In the light of the narrative thus far, this Section 11 Court is of the view that it would be appropriate to appoint an Arbitrator leaving it open to make prayers in the captioned applications before the sole Arbitrator *inter alia* under Section 17 and make other suitable prayers *inter alia* under Section 26 of A and C Act if so advised and if so desired. If any of prayers to be made before the sole Arbitrator is inefficacious, party can always come to this Court under sub section (3) of Section 9 besides Section 27 of A and C Act if evidence needs to be recorded.

10. Therefore, captioned applications are closed making it clear that they can be presented before sole Arbitrator (to be noted appointed in the latter part of this order *infra*) or take out an application under Section 17 of

A and C Act / under other suitable provisions of A and C Act with



same/similar prayer/s.

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11. As regards main OP, Mr. Adarsh Subramanian (Enrol.No.2133/2016) Advocate, having office at No.20, Madhumalathi, Seethammal Road, Seethammal Colony, Alwarpet, Chennai-600 018, Mobile No.:8754400961, Email-ID : adarsh@aklawchambers.com is appointed as sole Arbitrator. The learned sole Arbitrator is requested to enter upon reference qua arbitrable disputes that have arisen from and out of agreement to sell, agreement for construction, both dated 30.04.2014 and adjudicate the *lis*.

12. Though obvious, it is made clear that it is open to the sole Arbitrator to adopt procedures, measures and make orders deemed appropriate resorting to any procedure in any other Statute including Mental Healthcare Act, 2017 for resolving the situation qua condition of sole respondent who is said to be in a state of comatose owing to an unfortunate road accident.

13. Arbitration proceedings shall be in accordance with the Madras



shall be as per Madras High Court Arbitration Centre (MHCAC)
(Administrative Cost and Arbitrator's Fees) Rules 2017.

14. Captioned main OP and captioned applications are
disposed of in the aforesaid manner. There shall be no order as to costs.

Sd./- M.S.J
31.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

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