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Arb. O.P. No. 529 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.529 of 2022

M/s.Concord Trading,
Represented by its Partner Mr.Rakesh Kumar N.
Earlier having its registered office at:
No.24 Wellington Estate, Ethiraj Salai,
Now at No.55, Hunter's Road, Choolai,
Chennai – 600 112.

... Petitioner

Vs.

Dr.P.Vijaykumar
residing at
Plot No.518, Karpaga Nagar,
K.Pudur,
Madurai District – 625 707.

... Respondent

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

(i) to appoint the sole Arbitrator to constitute Single Member Arbitral Tribunal to adjudicate/resolve the disputes between the parties, in accordance



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with provision of Section 11(6) of the Arbitration and Conciliation Act, 1996;

(ii) to direct the respondent to pay the petitioner the costs of the instant petition.

For Petitioner : Mr.T.Shrinikethan

For Respondent : No appearance

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to constitute the Arbitral Tribunal to resolve the dispute that have arisen between the petitioner and the respondent.

2.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3.The case of the petitioner is that the petitioner firm entered into an sale agreement dated 18.09.2018 and the same was registered as Document No.1952 of 2018, before the Sub-Registrar Office, Kallikudi,

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Madurai. As per the sale agreement, the total sale consideration was fixed at Rs.23 Lakhs and the petitioner paid a sum of Rs.3 Lakhs by way of cheque on 18.09.2019, while entering into an agreement. Thereafter, a sum of Rs.19 Lakhs was paid by way of cheque dated 15.10.2018 bearing No.00008, drawn on ICICI Bank, Montienth Road, Chennai and a balance consideration of Rs.1 Lakh is payable. The petitioner is ready and willing to pay the balance consideration of Rs.1 Lakh and however, inspite of several attempt, the petitioner could not contact the respondent. Therefore, he issued a legal notice dated 17.08.2021, suggesting to appoint Arbitrator in terms of Clause 13 of the sale agreement. Even after the receipt of the said legal notice dated 17.08.2021, the respondent has not come forward to give consent to appoint the sole Arbitrator. Therefore, without any other option, the present application for appointment of Arbitrator has been filed.

4.Further, he would submit that, though the remedy is available for the purpose of specific performance and specific relief Act, there is no bar for the petitioner to adjudicate the present dispute by way of arbitration. In this regard, he has also referred the judgment rendered by the Hon'ble Apex



Court in the case of *Olympus Superstructures Pvt. Ltd., vs. Meena Vijay*

Khetan and Others reported in *(1995) 5 Supreme Court Cases 651*. The

relevant of the said judgment is extracted hereunder:

“34.In our opinion, the view taken by the Punjab, Bombay and Calcutta High Courts is the correct one and the view taken by the Delhi High Court is not correct. We are of the view that the right to specific performance of an agreement of sale deals with contractual rights and it is certainly open to the parties to agree with a view to shorten litigation in regular courts to refer the issues relating to specific performance to arbitration. There is no prohibition in the Specific Relief Act, 1963 that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration. Nor is there such a prohibition contained in the Arbitration and Conciliation Act, 1996 as contrasted with section 15 of the English Arbitration Act, 1950 or Section 48(5)(b) of the English Arbitration Act, 1996 which contained a prohibition relating to specific performance of contracts concerning immovable property.

36.Further, as pointed out in the Calcutta case merely because there is need for exercise of discretion in



case of specific performance, it cannot be said that only the civil Court can exercise such a discretion. In the above case, Ms Ruma Pal J. observed:

“merely because the Section of the Specific Relief Act confer discretion on Courts to grant specific performance of a contract does not mean that parties cannot agree that the discretion will be exercised by a forum of their choice. If the converse were true, then whenever a relief is dependent upon the exercise of discretion of a Court by statute e.g the grant of interest or costs, parties could be precluded from referring the dispute to arbitration.:

We agree with this reasoning. We hold on Point 3 that disputes relating to specific performance of a contract can be referred to arbitration and Section 34(2)(b)(i) is not attracted. We overrule the view of the Delhi High Court. Point 3 is decided in favour of the respondent.”



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5.A perusal of the above, it is clear that the present dispute can be adjudicated by arbitration, wherein Arbitrator can also pass order in the specific performance agreement in the event of mutual agreement by the parties to resolve the matter by virtue of the appointment of arbitrator. Therefore, this Court feels that, it would be appropriate appoint sole Arbitrator to resolve the disputes between the petitioner and the respondent

6.Accordingly, Mr.T.Sai Krishnan, Enrollment No.564/93, residing at No.48, Second Floor, Vanguard House, Moore Street, Chennai 600 001. (Mobile No. 9840229542) is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator appointed herein, shall 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 Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire



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remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent.

7.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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