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Arb.O.P (Com.Div.) No.246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.246 of 2022

Solar Designs Private Limited
Represented by its Director
Mr.A.A.K.Apath Sakaayem
No.1, A Wing
3rd Floor, Parsn Manor
No.602, Anna Salai
Chennai - 600 006

... Petitioner

Vs.

1. Mr.S.Ramesh

2. R.Subramani Naicker

... Respondents

Arbitration Original Petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996 to substitute the arbitration under Section 15(2) of the Arbitration and Conciliation Act, 1996 in the matter of arbitration between Solar Designs Pvt. Ltd., and S.Ramesh, R.Subramani Naicker arising out of the Memorandum of Understanding dated 11.08.2010.

For Petitioner : Mr.T.M.Mano



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Arb.O.P (Com.Div.) No.246 of 2022

For Respondents : Mr.V.Subramani

ORDER

This order will now dispose of captioned 'Arbitration Original Petition'['Arb.OP' for the sake of brevity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 20.06.2022, which reads as follows:

'The sole Arbitrator has since been elevated to the Bench of this Hon'ble Court, this has necessitated the presentation of the aforementioned Arbitration Original Petition in this Court inter alia under Section 15(2) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] on 21.04.2022 is Sharath Chandran's (learned counsel for petitioner) say.

2. Issue notice to the respondents returnable by 10 days i.e., returnable by 30.06.2022. Private notice permitted.

3. Learned counsel for the petitioner is permitted to serve on the learned counsel who was representing both the respondents before the sole Arbitrator.



4. List 10 days hence. List on 30.06.2022.'

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3. Short form used in the aforementioned proceedings in the previous listing will continue to be used in the instant order for the sake of convenience and clarity.

4. Mr.T.M.Mano, learned counsel on record for sole petitioner, who is before this Court, adverting to aforementioned earlier proceedings dated 20.06.2022, submits that both respondents have since been served. Mr.Subramani, Advocate, having address for service at No.27, 1st Floor, Walltax Road, Sowcarpet, Chennai - 79 [Mob: 9884432641], who is before this Court submits that he has already filed vakalatnama on behalf of both the respondents yesterday (29.06.2022).

5. Owing to the short point on which captioned matter turns, Arb.OP was taken up for disposal with the consent of learned counsel on both sides.

6. In and by an order dated 02.07.2019 made in O.P.No.813 of 2018, a Hon'ble single Judge of this Court was appointed a sole Arbitrator and a scanned reproduction of the said order is as follows:



Arb.O.P (Com.Div.) No.246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.813 of 2018

M/s.Solar Designs Private Ltd.,
Rep. by its Director,
A.A.K.Apath Sakthayem,
No.1, 'A' Wing,
3rd Floor, Park Road,
No.602, Anna Salai,
Chennai-600 006

Petitioner

Vs.

1. S.Ramesh.
2. R.Subramani

Respondents

Prayer : Petition filed under Section 11(5) of Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to resolve the disputes between the petitioner and the respondents arising out of the Memorandum of Undertaking dated 11.08.2010.

For Petitioner : Ms.N.Rabiya

For Respondent : Served - No Appearance

ORDER

This Original Petition is filed seeking appointment of an Arbitrator to resolve the disputes between the petitioner and the respondents arising out of the Memorandum of Undertaking dated 11.08.2010.



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2. The petitioner entered into a lease deed dated 12.04.2010 with the respondents, who are the landlords, and paid a sum of Rs.3,50,000/- as advance, besides agreeing to pay a monthly rent of Rs.35,000/- for the subject property. The petitioner had given a sum of Rs.14,00,000/- as loan to the respondents to purchase the adjacent property on the promise that it would be leased out to him after construction on a monthly rent of Rs.20,000/-. The respondents agreed to repay the loan with interest in 33 Equated Monthly Installments (EMIs) of Rs.55,000/- each. A Memorandum of Undertaking dated 11.08.2010 (in short, 'MOU') was entered into between the parties on the above terms. The construction would be completed within 55 days of the date of MOU and in Clause 5 of the MOU, it is agreed upon by the parties that the sum of Rs.55,000/- towards EMI would be deducted from the rent payable. The case of the petitioner is that even after 18 months of the MOU, the construction was not completed and when it was completed the respondents attempted to vacate the petitioner from the premises. Hence, he filed O.S.No.360 of 2017 on the file of the Principal District Court, Poonamallee, seeking injunction and the same is pending. In that backdrop, the respondents filed R.C.O.P.No.57 of 2017, before the said Court seeking to vacate him on the ground of willful default of

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rent. As Clause 14 of the MOU provides for settlement of disputes by means of arbitration, the petitioner issued legal notice dated 31.03.2018 nominating a retired District Judge and sought for consent of the respondents. Since there was no response from the respondents, the petitioner is before this Court.

3. Despite service of notice, the respondents have not chosen to appear before this Court either in person or through any counsel.

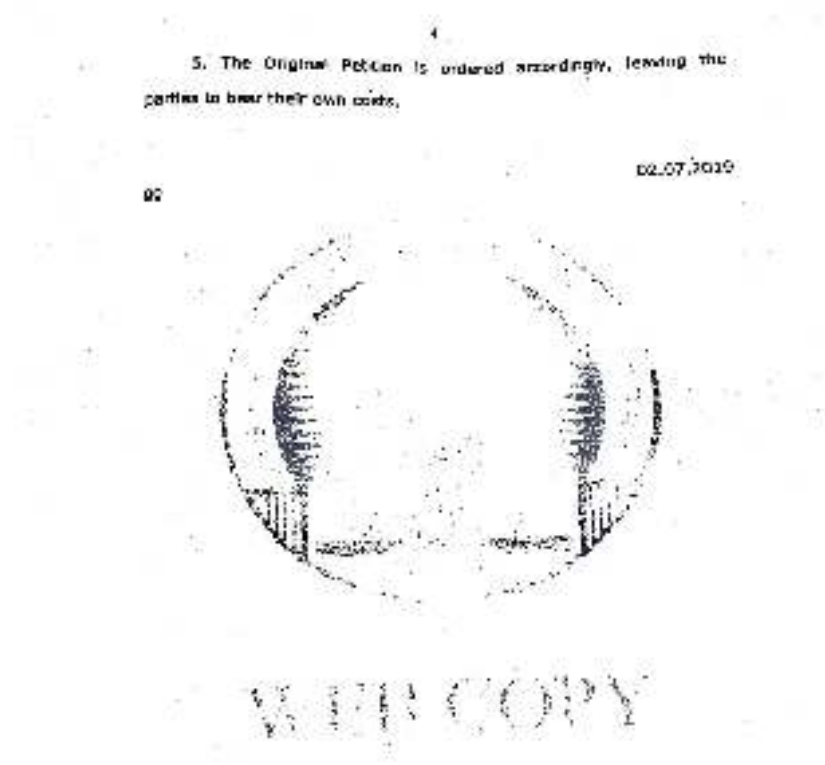
4. Having regard to the submissions of the learned counsel for the petitioner, this Court appoints Mr.S.Southeran Advocate, having office at NO.299, Law Chambers, High Court Buildings, Chennai-600 104, (Phone No.2653 5530), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. 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. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. 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.



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7. Aforementioned order is telltale qua arbitrable disputes and therefore, it is not necessary to dilate further on those aspects of the matter.

8. Arbitrator appointed in and by aforementioned order dated 02.07.2019 has since been elevated to Bench of this Hon'ble Court owing to which, Hon'ble Arbitrator has sent a communication dated 28.03.2022 to both sides and a scanned reproduction of the same is as follows:



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Justice.S.SOUNTHAR
B-4/B, Aditya Enclave
5th Main Road
Vagappair En Scheme
Chennai - 37

28.3.2022
Chennai

Sr

Ref. Arbitration No: 1 of 2019
O P No 013 of 2015 (on the file of High Court, Madras)

M/s Solar Designs Pvt Ltd Rep'd by
its Director A.A.K. Arulthasakayam

vs

S. Ramesh
2. H. Subramani Naicker

Plaintiff

Respondents

Notice to both the parties

In view of my elevation as additional judge of High Court, Madras, I am not in a position to continue above arbitration proceedings. Hence, I request both of you to receive back the papers. The Arbitrator's fee already paid is appropriated towards earlier sittings.

Yours faithfully
S. S. Sounthar

To:
Mr. V Jayachandran, Advocate 406, 4th floor, Kavery complex, 96 & 104
Nunganpakkam High Road, Chennai 34 Counsel for Plaintiff

Mr. V. Subramani, Advocate 27, Westex Road, 11th Floor, Newcomet, Chennai 38
Counsel for Respondents

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9. Aforementioned learned counsel on both sides submit that pleadings were completed before the Hon'ble Arbitrator, who has since been elevated to the Bench of this Court and therefore, arbitration should now proceed from the stage of completion of pleadings. Both sides consent for appointment of a former Member of Bench of this Court as sole Arbitrator.



10. In the light of narrative thus far, Hon'ble Mr.Justice V.Bharathidasan (Retd.), Former Judge of this Court, residing at No.42 (NB) Greenways Road, Chennai - 600 028, Mob: 94443 83139 and 94455 00224, E-mail: dasanvb@gmail.com is appointed as sole Arbitrator.

11. Before writing the concluding part of this order, it is deemed appropriate to mention that captioned Arb.OP has been presented under Section 15(2) of A and C Act (as already alluded to supra) and the language in which sub-section (2) of Section 15 is couched makes it clear that when substitution becomes necessary, the rules that were originally applicable for appointment of arbitrator will kick in for substitution also. To be noted, Section 15(2) reads as follows:

'15. Termination of mandate and substitution of arbitrator :-

(1).....

(a)

(b)

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.'

12. One more aspect that needs to be recorded is, both learned



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counsel submit that the arbitrable disputes are not hit by restrictions regarding arbitrability qua *Vidya Drolia* principle *i.e.*, ratio laid down by Hon'ble Supreme Court in *Vidya Drolia & Ors. Vs. Durga Trading Corporation* reported in *2019 SCC OnLine SC 358*, as it is a lease arrangement. This submission is recorded.

13. Hon'ble Mr. Justice V.Bharathidasan (Retd.), is requested to enter upon reference qua MOU dated 11.08.2010, arbitrate qua arbitrable disputes that have arisen between the petitioner and respondent by holding sittings at 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) and render an award as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Captioned Arb.OP disposed of in the aforesaid manner. There shall be no order as to costs.

30.06.2022

Index: Yes/no

Speaking/Non-speaking Order

10/12



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Note: Registry to communicate this order forthwith to:

1. Hon'ble Justice V.Bharathidasan (Retd.,)
High Court, Madras
No.42 (NB) Greenways Road
Chennai - 600 028
Mob: 94443 83139 and 94455 00224
E-mail: dasanvb@gmail.com
2. The Director
Tamil Nadu Mediation and Conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.



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M.SUNDAR.J.,

gpa

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30.06.2022