



Arb.O.P.(Comm.Div).No.558 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2022

Coram:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arbitration Original Petition (Com.Div.) No.558 of 2022

M/s.Cheran Foundation Trust,
represented by its Trustee
Mr.Kharthick Palanisamy

... Petitioner

/versus/

M/s.CODE,
represented by its Sole Proprietor,
Mrs.Krithika Subrahmanian

... Respondent

Prayer: This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator to hear and decide the dispute amongst the parties arising out of the Construction Agreement dated 01.02.2021.

For Petitioner : Mr.S.Rajmakesh

For Respondent : Ms.Anbarasi Rajendran
for M/s.AAV Partners

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator to resolve the dispute arising out of the Construction Agreement dated 01.02.2021.

2.Learned counsel for the petitioner submitted that a Construction



Agreement dated 01.02.2021 was entered into between the petitioner and the respondent for constructing a residential project, comprising of ground plus 2 floors with various amenities and facilities, which would be mutually discussed and agreed upon between the parties. According to the petitioner, the petitioner has paid Rs.95 lakhs, out of consideration of Rs.1.2 crores as per the agreement. Learned counsel for the petitioner further submitted that as per joint measurement, only about 60% of the work was completed by the respondent even with several deviations and quality lapses in materials used and method of construction and there are spaces to re-do the entire work by demolishing and removing the present construction and therefore, a sum of Rs.2.50 crores to be spent for re-construction. In this regard, the petitioner sent a notice dated 29.07.2022 to the respondent for appointment of Arbitrator by mentioning the name of the Arbitrator. But the respondent has not come forward to reply the same. According to the petitioner, in the event that negotiations yield no amicable solution within 15 days, the parties shall refer the matter to Arbitration as per the provisions of the Arbitration and Conciliation Act 1996. Hence, the learned counsel for the petitioner requested this Court to appoint a retired High Court Judge as Arbitrator to adjudicate the disputes, since the petitioner's total claim would be amount Rs.2.50 crores.

3.Reiterating the averments made in the counter affidavit filed by the



respondent, the learned counsel for the respondent submitted that though the respondent had completed 90% of the construction work, the petitioner unilaterally terminated the Construction Agreement and sought for the refund of the entire amount paid to the respondent. Learned counsel for the respondent further submitted that the petitioner has cleared only a sum of Rs.90,00,000/- and the remaining amount of Rs.30,00,000 has to be paid by the petitioner, so that the respondent can complete the entire construction. Without prejudice to this contention, the respondent is agreeable to the constitution of an arbitral tribunal.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials placed on record.

5.It could be seen from records that the petitioner and the respondent had entered into a Construction Agreement dated 01.02.2021 for constructing a residential project, comprising of ground plus 2 floors. As per the agreement, the respondent was supposed to complete the construction work within 180 days. Since the respondent has not completed the construction even after the delay of 365 days, the petitioner sent a notice dated 29.07.2022 calling upon the respondent to approve and appoint the Nominee as the Sole Arbitrator to adjudicate upon the disputes between them, as per clause 13(iii) of the Construction Agreement, which provides



for arbitration in terms of the provisions of the Arbitration and Conciliation Act, 1996.

6.It is appropriate to extract Sub Clause 13(iii) of the Construction Agreement as under:

"13.(iii) All dispute and/or claim arising out of or in connection with this AGREEMENT, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration referring the same to a Sole Arbitrator, who shall be appointed by both the OWNER and the CONTRACTOR."

7.On a perusal of the above, it is clear that any dispute arising out of contract/agreement between the parties, the matter can be adjudicated and settled by an arbitrator.

8.Therefore, this Court is of the view that an Arbitrator be appointed to enter upon reference and adjudicate the dispute in accordance with law. As both the parties agreed for appointment of the Sole Arbitrator, this Court feels it appropriate to pass the following order:

i)Hon'ble Mr.Justice N.Kirubakaran (Retd.), residing at No.36, II Cross Street, Rayala Nagar, Ramapuram, Chennai-600 089, Contact No.94450 25454 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the



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parties.

ii) That 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 a copy of the Order.

iii) That 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.

9.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.

07.12.2022

vga

Issue order on 13.12.2022



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KRISHNAN RAMASAMY, J.

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