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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.M.A.No.3587 of 2021

Olympia Infratech,
a Unit of Olympia Tech Park (Chennai) Pvt.Ltd.,
Having its registered office at
1, Sidco Industrial Estate, Guindy,
Chennai 600 032.

...Appellant

Vs

M/s.Olympia Opaline Apartment Owners Association (OOOA)
Rep.by its Secretary, Sivabaskaran Pachamal,
Having its office at Amethyst Stilt,
Olympia Opaline, Phase 1, OMR, Navalur,
Chennai, Tamil Nadu-6603103

... Respondent

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the impugned order dated 27.10.2021 made in IA.No.2 of 2021 in Arbitration case No.5 of 2019 on the file of Arbitral Tribunal consisting of the sole Arbitrator Hon'ble Justice K.Chandru Former Judge High Court of Madras.

For Appellant : Mr.M.V.V.N.Sivanthy
for M/s.Fox Mandal and Associates (Law Firm)

For Respondent : Mr.Vaibhav R.Venkatesh.

ORDER

This order has to be read in conjunction with and in continuation of earlier proceedings dated 10.02.2022 made by me in A.No.412 of 2022 which reads as follows:

'Captioned application has been filed under Section 27 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity,



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seeking assistance of this Court in taking evidence and the captioned application is primarily and predominantly predicated on an order dated 27.10.2021 made by a Arbitral Tribunal [AT] constituted by former Hon'ble Judge of this Court (sole arbitrator). To be noted, this 27.10.2021 order has been made in I.A.No.2 of 2021 in Arb.No.5 of 2019 {hereinafter 'said AT order' for convenience}.

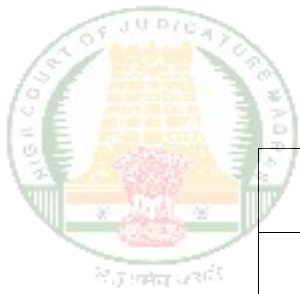
2. Mr.Nithyaesh Natraj, learned counsel for applicant is before this Virtual Court. Mr.Sivanthi, learned counsel of M/s.Fox Mandal & Associates (Law Firm) who is before this Physical Court submits that the respondent in the captioned application has assailed the said AT order in this Court, such challenges are being given the nomenclature 'Civil Miscellaneous Appeal' (CMA) by the Registry and it is CMA.No.3587 of 2021 is his further say. Learned counsel submits that counsel for applicant in the captioned matter (Mr.Nithyaesh Natraj) has accepted notice on behalf of the respondent in this CMA.

3. From the narrative thus far, it follows as a sequitur that the captioned application and aforementioned CMA have to necessarily be heard together as captioned application is primarily and predominantly predicated on said AT order which has been assailed in aforementioned CMA.

4. There is no disputation or disagreement between the two counsel before this Court that the entire matter arises under A and C Act and that it is Arbitration Commercial Division matter.

5. The relevant/excerpted parts of the Determination/Roster made by Hon'ble Acting Chief Justice which is now operating on and from 07.02.2022 is as follows:

Hon'ble Judges	Subject
M.Sundar, J	All Petitions / Applications invoking Arbitration and Conciliation Act, 1996 / Arbitration Act, 1940 relating to Commercial Division; Insolvency Petitions; Company Petitions and Company Appeals



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Hon'ble Judges	Subject
P.T.Asha, J	Civil Revision Petitions, Transfer Civil Misc. Petitions, Civil Misc. Second Appeals and Civil Misc. Appeals - from the year 2019

6. Both the learned counsel pointed out that the aforementioned CMA is listed before Hon'ble Judge vide serial No.30 determination because the nomenclature is CMA though it is a Arbitration Act Commercial Division matter. It is also pointed out that regarding S.No.15 while there is mention about petitions/applications, there is no mention about appeals qua arbitration matters relating to commercial division.

7. It is also pointed out that the situation that has arisen in the case on hand may not be a one off case and there are many other such cases.

8. The submission that the captioned matter and CMA have to be tagged and heard together by one Court is clearly indisputable in the light of the narrative thus far.

9. Registry is directed to place this case file along with this proceedings of mine before the Hon'ble Acting Chief Justice and seek suitable orders.'

2. Pursuant to the aforementioned proceedings, the matter was placed before Hon'ble Chief Justice, who on the administrative side vide order dated 15.02.2022 directed the captioned CMA to be listed before this Court along with A.No.412 of 2022. Therefore, captioned CMA has been listed along with A.No.412 of 2022 today.

3. Mr.M.V.V.N.Sivanthy, learned counsel of M/s.Fox Mandal & Associates (Law Firm) on behalf of appellant in the captioned CMA submitted that he has instructions from the appellant to withdraw the captioned CMA and learned counsel has made an endorsement in the case file, which reads as follows:



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As per
the client's
Instruction
We may be
permitted to
withdraw this
CMA No. 3587/2021
M.V.V.V. Sivanthy
Counsel for Applicant
M.V.V.V. Sivanthy
1560/2010
18/4/22

4. Learned counsel reiterates the aforementioned endorsement in the hearing. In the light of the aforementioned endorsement and reiteration of the same, captioned CMA dismissed as withdrawn. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gpa

To:

The Hon'ble Mr.K.Chandru (Retired Judge),
Sole Arbitrator,
No.3, Justice Sundaram Road (Basement),
Mylapore, Chennai-4.

+1cc to M/s. Fox Mandal & Associates, Advocate, S.R.No.26305

C.M.A.No.3587 of 2021

SPD(CO)
SU(26/04/2022)