

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY ,THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

ARBITRATION APPLICATION NO: 35 OF 2021

Between:

Varanasi Arun Kumar, S/o V. Suryanarayana, Aged about 47 years, occ. Purohit,
R/o H.No. 8-2-684/102/70, N.B.T.Nagar Road No.12, Banjara Hills, Hyderabad

...APPLICANT

AND

M/s Suvama Bhoomi Developers Pvt Ltd., H.No. 8-2-293/82/A/39, Plot No.39, Road
No.5, Behind Bata Showroom, Jubilee Hills, Hyderabad-500033 Rep by its Managing
Director, Mr. B. Sreedhar S/o Subbaiah Chowdary R/o Hyderabad

...RESPONDENT

Arbitration Application Under Section 11(6) of Arbitration and Conciliation
Act, read with Rule (b) of the scheme for appointment of Arbitrators praying that
this Hon'ble Court may be pleased to constitute an Arbitrator Tribunal by
appointing Solo Arbitrator to settle the disputes of the Applicant . With the
respondent.

Counsel for the Applicant :SRI. B. MOHAN

Counsel for the Respondent: SRI M. P. KASHYAP

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Arbitration Application No.35 of 2021

ORDER:

This Arbitration Application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), for appointment of a sole Arbitrator to adjudicate the disputes between the parties arising out of an agreement entered into by the parties for allotment of a plot in Suvarnakuteer Phase-I.

2. Heard learned counsel for the applicant and learned counsel appearing for the respondent.

3. Applicant contends that he has agreed and accepted to purchase plot Nos.1 and 2 in the layout developed by the respondent, viz., Suvarnakuteer Phase-I layout, B-Block, in Sy.No.406/P situated at Chowlapally Village, Farooqnagar Mandal, Mahaboobnagar District, and accordingly, entered into a formal agreement titled 'Application for Provisional Allotment of a Plot in Suvarnakuteer Phase-I' and had also paid certain amount towards part of sale consideration.

4. Applicant further contends that due to certain exigencies, it could not make balance sale consideration in terms of the agreement entered into with the respondent and sought for refund of the amount already paid. However, the respondent did not refund the amount paid by the petitioner towards part of sale consideration in respect of purchase of plot Nos.1 and 2 in Suvarnakuteer Phase-I. As such, the applicant got issued a legal notice dt.12.04.2012 to the respondent demanding for refund of the amount.

5. Applicant contends that since the respondent failed to respond to the said notice, nor refunded the amount, it had approached the civil Court of competent jurisdiction and filed a suit, bearing O.S.No.2076 of 2012 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad, for refund of the amount of Rs.3,72,000/- together with interest @12% p.a. In the said suit, after receipt of summons by the respondent, it had filed I.A.No.426 of 2014 objecting to the maintainability of the suit, in view of the arbitration clause in the agreement. The said I.A. was allowed by the learned IV Senior Civil Judge, *vide* order dt.19.07.2015, returning the plaint filed by the applicant herein

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for pursuing the remedies under Clause 8 of the Act for resolving the subject dispute.

6. Applicant also contends that upon returning of the said plaint filed by the applicant, it had got issued another notice dt.05.06.2016 to the respondent, whereby it had sought for resolving the dispute by reference to arbitration in terms of Clause 26 of the agreement dt.16.08.2011. Since the respondent did not reply to the said notice, nor taken any steps to have the dispute resolved or appointment of sole arbitrator, the present application is filed.

7. Learned counsel for the respondent submits that the present application is hopelessly barred by limitation and therefore, the applicant is not entitled to seek for appointment of an arbitrator to resolve the dispute between the parties, more so, when it had failed to adhere to the terms of the agreement.

8. I have noted the respective contentions urged by the learned counsel appearing for the parties and perused the record.

9. Firstly, the issue of limitation is a mixed question of fact and law. In the facts of the case, the applicant had initially

approached competent civil Court and filed a suit. In the said suit, the respondent herein had filed an I.A. contending as to existence of arbitration clause in the agreement. Upon the respondent taking the said plea, the civil Court returned the plaint and relegated the parties to pursue the remedy made under Clause 8 of the Agreement i.e. by Arbitration. Thus, it cannot be said that the applicant had slept over his rights and by the present application, the applicant is seeking to give life to what is otherwise deadwood, inasmuch as the period of pendency of suit before the civil Court would stand excluded as per Section 14 of the Limitation Act, 1963. The claim of the respondent for the subsequent period, if any, can be raised before the learned Arbitrator as held by this Court in Arbitration Application No.106 of 2018 dt.25.09.2019.

10. Further, it is well settled position of law that under Section 11(6) of the Act, what the Court required to see at pre-reference stage is as to the existence of a valid arbitration clause in the agreement between the parties.

11. In the facts of the present case, it is not in dispute that there is an agreement, which contains a clause of dispute

resolution mechanism by reference to arbitration. Clause 26 of the agreement contains arbitration clause, which reads as under:

"26. The applicant agrees that in the event of any dispute or differences arising out or touching upon or in relation to the terms of this Application including the interpretation and validity of the terms thereof and the respective rights and obligations of the Applicant and the Company shall be referred by any party to a sole arbitrator to be appointed by the Managing Director of the Company whose decision shall be final and binding upon the parties. It is understood that no other person or authority shall have the power to appoint the arbitrator. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at Hyderabad only. The courts having jurisdiction over the project site shall alone have the jurisdiction."

12. Having regard to the above clause and also since it is not in dispute between the parties as to the existence of arbitration clause, this Court is of the view that the claim of the respondent as regards the applicant's failure to adhere to the terms and conditions of the agreement, cannot be gone into by this Court at this ~~pre~~-reference stage, which needs to be considered by the

arbitrator upon entering reference to resolve the dispute between the parties, more so, in light of the order passed by the civil Court, in I.A.No.426 of 2014 in O.S.No.2076 of 2012 filed by the respondent seeking return of the plaint in the suit filed by the applicant as plaintiff.

13. In view of the above, this Court is of the view that the dispute between the parties needs to be referred to arbitration to be conducted by a sole arbitrator.

14. Hence, I hereby appoint Sri M.Vijaya Bhaskar Reddy, a retired District Judge, Flat No.401, Aditya Castle, Srinagar Colony, Hyderabad - 500073, to be the sole Arbitrator, who will adjudicate the disputes between the parties, as may be raised before him. The learned Arbitrator shall fix his own remuneration upon deliberation and consultation with the parties. He shall also estimate the cost and expenses for the secretarial assistance and other incidental expenditure of the arbitration proceedings. The parties will bear the expenses of the arbitration proceedings in equal share.

15. Accordingly, this application is allowed. No order as to costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand closed.

//TRUE COPY//

SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To

1. Sri M. Vijaya Bhaskar Reddy, a Retired District Judge, Flat No. 401, Aditya Castle, Srinagar Colony, Hyderabad – 500073 (By Special Messenger) (along with a copy of Arbitration Application affidavit and material papersfile with A.a
2. One CC to SRI. B. MOHAN, Advocate [OPUC]
3. One CC to SRI. M. P. KASHYAP, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

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HIGH COURT

DATED:28/06/2022



ORDER

ARB.APPL.No.35 of 2021

ALLOWING THE ARBITRATION
APPLICATION.

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NMA
27/8/2022