



Arb.O.P.No.34 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.09.2023**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arb.O.P.No. 34 of 2023

L.Asghar Ali

... Petitioner

Vs.

S.Jayakumari

... Respondent

Arbitration Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to pass an order to appoint an arbitrator as per Clause 16 of the agreement dated 20.04.2011 existing between the petitioner and the respondents.

For Petitioner : Mr. C.D.Sugumar

For Respondent : Mr.J.Franklin

ORDER

This petition has been filed to appoint an Arbitrator as per Clause 16 of the agreement dated 20.04.2011 existing between the petitioner and the respondents.



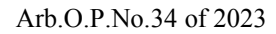
2. The learned counsel for the petitioner submitted that the petitioner is the managing partner of the partnership firm under the name and style “Aries Venturies” and the respondent is the owner of the property mentioned in the schedule; the petitioner and the respondent have entered into a joint venture agreement dated 20.04.2011, wherein it was agreed between the parties thereon to construct 31 individual houses in the above property under the name and style “Priyadharsini Villas”; the respondent had executed a joint Power of Attorney on 06.06.2011 in favour of the petitioner to deal with the above property; due to some extraordinary reasons, the respondent had agreed for entering into a supplementary deed dated 10.04.2013 to the above joint venture agreement dated 20.04.2011 wherein it was agreed to extend the time limit for construction up to 20.04.2015; the construction of houses could not be completed even during the extended period due to non-cooperation by the respondent by providing the individual patta; however the respondent unilaterally cancelled the power of attorney dated 06.06.2011 and issued notice to the petitioner as though he is the reason for the delay; the respondent issued a legal reply to the petitioner and demanded a sum of Rs.1,90,69,868/- towards expenses incurred to develop the property and for putting up construction.

2.1 As per the joint venture agreement executed between the parties, in case of disputes, the same should be referred to arbitration; since the



respondent refused to appoint an Arbitrator, the petitioners issued a notice to call upon the respondent to refer the matter for arbitration by appointing an Arbitrator as per Clause 16 of the agreement; the respondent had issued a notice on 20.07.2022 by stating that one P.Rajendran has been appointed as a Sole Arbitrator; the petitioner had also sent a reply dated 11.08.2022 by accepting the appointment of the said Arbitrator; however the Arbitrator had not commenced the arbitration proceedings and he had sent a letter dated 03.01.2023 by stating that he was not interested to act as an Arbitrator due to his preoccupation; hence the petitioner had filed this petition seeking to appoint an Arbitrator.

3. The respondent had filed his counter and in which it is stated that as per the joint venture agreement dated 20.04.2011, the petitioner ought to have completed the construction within a period of two years; despite extension of time has been given by virtue of a supplementary agreement for further two years, the petitioner did not complete the project; in the Power of Attorney dated 06.06.2011, the petitioner himself has agreed to take necessary steps to get necessary documents but the same was not done by him; the agreement got lapsed as early as in the year 2015; after the lapse of eight years, the petitioner has come forward with the present petition seeking appointment of Arbitrator



4. The fact that the petitioner and the respondent had entered into a joint venture agreement on 20.04.2011 was not denied. On perusal of the said agreement, it is seen that the project term was agreed to be before 20.04.2013. The respondent had also executed a Power of Attorney dated 06.06.2011 in favour of the petitioner by giving him power to obtain necessary documents in connection with plan approval and all other documents by making necessary arrangements. Since the project could not be completed before the agreed time limit, the parties have also executed a supplementary joint venture agreement and through which the time for project has been further extended till 20.04.2015. It is learnt that the project was not completed even within the extended time.

5. No doubt the original venture agreement dated 20.04.2011 does contain an arbitration clause under Clause 16. That fact was not denied by the respondent. However it is claimed by the respondent that the agreement got lapsed due to efflux of time and hence the arbitration clause does not survive.



In fact, the petitioner himself has given a consent letter dated 24.09.2014 by stating that he does not have any objection to cancel the power of attorney given to him. Consequent to that the power was cancelled on 01.10.2014. While writing the letter dated 24.09.2014 the petitioner did not reserve any right and subsequently the extended period of limitation also expired.

6. It is alleged by the petitioner that after he had sent a letter to the respondent, the respondent had sent a legal notice by calling upon the petitioner to appoint the Arbitrator. In fact the letter dated 16.05.2022 sent by the petitioner is for certain demand of money towards the alleged loss sustained by the respondent. In the said notice itself it is stated that the joint venture agreement and the supplementary agreement stood terminated. The petitioner sent a notice on 10.07.2022 to call upon the respondent to appoint Arbitrator. On 20.07.2022 the respondent has sent a reply by stating that one P.Rajendran has been appointed as Arbitrator and for which the petitioner had given his consent.

7. However it is claimed by the learned counsel for the respondent that giving consent for the appointment of Arbitrator at request made by the petitioner, cannot save the claim from limitation. The agreement itself is not



alive and it got extinguished. The agreement is dead for all purposes and that is inclusive of arbitration clause as well.

8. In support of the above contentions, the learned counsel for the respondent cited the decision of the Hon'ble Supreme Court of India in ***M/s.B and T AG Vs. Ministry of Defence*** reported in ***2023 LiveLaw (SC) 466***. In the said judgment it is held that mere consonance by way of writing letters / reminders would not amount to extend the time of limitation. It is further stated that if no time limit has been prescribed for appointment of arbitrator, the maximum period should be three years from the date of cause of action and in accordance with Section 137 of the Limitation Act.

9. According to Section 9 of the Limitation Act, once the time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it. In the case on hand, not only the agreement got expired on 20.04.2015 but the limitation contemplated under Section 137 of the Limitation Act also got expired due to lapse of several years subsequent to the expiry of the agreement.



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10. As stated already, in the letter issued by the petitioner to the respondent by expressing his consent to cancel the power of attorney, he did not reserve any right of claim. The Hon'ble Supreme Court has held in the ***Bharat Sanchar Nigam Limited and Another Vs. Nortel Networks India Private Limited***, reported in **(2021) 5 SCC 738** that the period of limitation for issuing notice of arbitration would not get extended under mere exchange of letters.

11. It is not the case of the petitioner that another supplementary agreement has been executed subsequent to the expiry of the agreement dated 09.04.2013. Since the arbitration clause also got expired due to lapse of the agreement itself, the petitioner is not entitled to the remedy of appointment of arbitrator by giving fresh life to an already expired agreement between the parties.

12. In view of the above stated reasons, I do not find any merit in the petition filed by the petitioner and hence the petition is dismissed.

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Index: Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes / No



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