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ARB. O.P.(Com.Div) No.130 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.130 of 2023

M/s.Shreekeerti Properties Private Ltd.,
having registered Office at
Newry Grandeur,
Plot No.106, New Door No.19 (Old No.11),
B-Block, 2nd Avenue,
Anna Nagar East,
Chennai - 600 102.

...

Petitioner

vs.

B.Sivaganesh

...

Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent.

For petitioner

: Ms.G.Thamizharasi
for M/s.Giridhar and Sai

For respondent

: No appearance

ORDER



ARB. O.P.(Com.Div) No.130 of 2023

WEB COPY

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court.

2. The petitioner is a Builder and the respondent is a land owner. The petitioner and the respondent have entered into a Construction Agreement, dated 03.10.2018. According to the petitioner certain sums are due and payable by the respondent to the petitioner under the Construction Agreement, dated 03.10.2018. There seems to be a dispute between the petitioner and the respondent arising out of the Construction Agreement, dated 03.10.2018. The Construction Agreement, dated 03.10.2018 contains an arbitration agreement which is extracted hereunder :-

In case of any disputes arising between the ALLOTTEE and BUILDER on any issue under this agreement, they are subject to the jurisdiction of Courts at Chennai and the laws and regulations governing construction in Tamilnadu. Both the parties agree to refer the same for Arbitration, as per the provisions of the Arbitration and Conciliation Act, 1996 to Mr.P.J.George, Advocate, 2-D Owners Court, Montieth Lane, Egmore, Chennai - 600 008.

3. The petitioner has also invoked the arbitration by sending a



ARB. O.P.(Com.Div) No.130 of 2023

notice to the respondent on 21.11.2022. Despite the same, the respondent has chosen not to reply or appoint his Arbitrator. Since the arbitration agreement provides a named Arbitrator to be appointed by the petitioner, which would amount to an unilateral appointment, the petitioner has been constrained to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court. The respondent has been served through Substituted Service. Since earlier notices sent by the petitioner were returned unserved, the name of the respondent is also printed in the cause list, today.

4. Since, there is a valid arbitration agreement available in the Construction Agreement, dated 03.10.2018, which is the subject matter of the dispute and the petitioner having invoked the said arbitration clause by sending the arbitration invocation notice to the respondent through its letter dated 12.12.2022, this Court will have to necessarily appoint an Arbitrator, who shall adjudicate the dispute between the petitioner and the respondent which has arisen out of the Construction Agreement, dated 03.10.2018.

5. For the foregoing reasons, this petition is allowed as prayed for



ARB. O.P.(Com.Div) No.130 of 2023

by appointing Mr.A. Ratnavelu, Principal District Judge (Retd.) as the Sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the Construction Agreement, dated 03.10.2018.

a) Accordingly, this Court appoints Mr.A. Ratnavelu, Principal District Judge (Retd.), who is having office at Willow - 401, Prince Green Woods, No.66, Vanagaram Road, Athipet, Chennai - 600 058 as a sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the Construction Agreement, dated 03.10.2018.

b) The sole Arbitrator appointed shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

c) Both the parties shall equally share the Arbitrator's fees payable to the sole Arbitrator.

d) The Arbitrator shall conduct the Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the Arbitration by passing an Arbitral Award, within the stipulated time as fixed under the Arbitration and Conciliation Act, 1996.



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ARB. O.P.(Com.Div) No.130 of 2023

28.07.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2

ABDUL QUDDHOSE, J.

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ARB. O.P.(Com.Div) No.130 of 2023

Arb. O.P. (Com. Div.) No.130 of 2023

28.07.2023