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ARB.O.P.(Com.Div) No.349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.349 of 2023

1.S.Srinivasan

2.M.Ramesh

3.S.S.Vigneshram

... Petitioners

Vs.

1.Balu

2.Athmavallinathan

3.Chandra Ammal

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, read with Rule 2 of the Appointment of Arbitrators of the Madras High Court Scheme, 1996, praying to appoint an Arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, to decide the dispute between the petitioners and the respondent arising out of the Partnership Deed dated 1st April 2012.

For Petitioners : Ms.Anu Krithik Anand
for Mr.Sharath Chandran



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For Respondents : Ms.R.Ajitha
for Mr.C.Suraj

ORDER

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

2. The petitioners and the respondents have entered into a Partnership Deed dated 01.04.2012. There seems to be a dispute arising out of the said Partnership Deed. There is an arbitration clause in the said Partnership Deed and the same is extracted hereunder:-

“15. Arbitration:

Any dispute or difference between the partners arising in regard to the construction or terms of this deed or any party there of or in respect of the accounts or of the rights and liabilities of the partners under this deed or any other matter relating to the partnership, shall be referred to arbitration, each party appointing one arbitrator or the partners mutually agreeing upon to



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a single arbitrator and the provisions of the Indian Arbitration Act, 1940 and any statutory modification thereof shall apply.”

3. The petitioners have invoked arbitration in accordance with the arbitration clause by sending notice to the respondents on 11.03.2023. The respondents have also sent a reply dated 19.03.2023 to the arbitration invocation notice dated 11.03.2023 sent by the petitioners.

4. Since there is no consensus between the petitioners and the respondents with regard to the name of the Arbitrator, the petitioners have filed this petition under Section 11 of the Act, seeking for appointment of an Arbitrator by this Court.

5. The learned counsel for the respondents also admits the existence of the arbitration clause available in the Partnership Deed dated 01.04.2012, which is the subject matter of dispute. She would submit that since both the parties are in Cuddalore, it would be better if the arbitration is held at Cuddalore.



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6. However, the learned counsel for the petitioners would submit that since the claim is more than Rs.3 Crores, it would be better if a Former Judge of this Court is appointed as an Arbitrator, to adjudicate the dispute between the parties. However, she would submit that it would be left open for the Arbitrator to decide the venue of the arbitration.

7. After giving due consideration to the submissions made by both the counsels and in view of the existence of the valid Arbitration Agreement in the Partnership Deed dated 01.04.2012, which is the subject matter of dispute, this Court is inclined to appoint an Arbitrator, to adjudicate the dispute between the parties arising out of the Partnership Deed dated 01.04.2012. This Court also makes it clear that it is left open for the Arbitrator to decide the venue of the arbitration since in the arbitration clause available in the Partnership Deed dated 01.04.2012, which is the subject matter of dispute, the seat of the arbitration is not mentioned.

8. For the foregoing reasons, this Arbitration Original Petition is disposed of, by issuing the following directions:-

(a) This Court appoints Hon'ble Mr.Justice M. Sathyanarayanan



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(Retd.), Former Judge of Madras High Court, having Office at 108/64, Catholic Centre Main Building, I Floor, Armenian Street, Chennai – 600 001, as the Sole Arbitrator, to adjudicate the dispute between the petitioners and the respondents arising out of the Partnership Deed dated 01.04.2012.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the mutual agreement between the parties or as per the IV Schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the Arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.



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ABDUL QUDDHOSE, J.

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(e) With regard to the venue of the arbitration, it is left open for
the Arbitrator to decide the venue.

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Index: Yes/ No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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