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Arb.O.P.(Com.Div.) No.247 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div.) No.247 of 2021

Sri.A. Ramesh

... Petitioner

Vs.

M/s.Greenchoice Construction Company Private Ltd.,
No.10/2, First Main Road,
Kasturibai Nagar,
Adyar,
Chennai – 600 020.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11 of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator in terms of the said Joint Development Agreement dated 07.03.2011 for adjudicating the disputes/claims between the petitioner and the respondent that has arisen under the said Joint Development Agreement dated 07.03.2011 that had been entered into by and between the parties herein and to direct the respondent to pay the costs of this proceedings.

For Petitioner : M/s.R. Sahana

For Respondent : M/s.Umasudthan



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ORDER

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

2. The petitioner had entered into a Joint Development Agreement dated 07.03.2011 with the respondent. There seems to be a dispute arising out of the same. The petitioner had agreed for demolition of his flat and for construction of a new flat by the respondent under the said Joint Development Agreement. In the very same building, there were 11 other flat owners who had also separately entered into a Joint Development Agreement with the respondent. The petitioner has invoked the arbitration clause available in the Joint Development Agreement dated 07.03.2011 by issuing a notice to the respondent on 26.08.2020. A reply was also sent by the respondent on 06.09.2020, disputing the existence of the valid arbitration agreement since the other 11 flat owners have not agreed for arbitration in accordance with the arbitration clause. The respondent also stated that the other 11 flat



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owners have received the payments from the respondent and they do not have any claim against the respondent. Since the respondent did not agree for arbitration, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act.

3. The respondent has filed a counter-affidavit in this petition reiterating the contents of the reply dated 06.09.2020 sent to the arbitration invocation notice dated 26.08.2020, which are as follows:-

- a) There is no valid arbitration agreement between the petitioner and the respondent. According to the respondent, since the other 11 flat owners have not joined with the petitioner, the dispute cannot be referred to arbitration as per Clause 24 of the Joint Development Agreement dated 07.03.2011.
- b) Since the other flat owners have not given consent for arbitration, the dispute raised by the petitioner arising out of the Joint Development Agreement dated 07.03.2011, is not an arbitrable dispute.



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4. On a *prima facie* consideration, there is an arbitration clause.

5. Learned counsel for the respondent has now made an endorsement in the Court bundle stating that the respondent may be permitted to raise all objections that have been raised in this petition before the Arbitrator, once the Arbitrator is appointed by this Court, as and when an application is filed under Section 16 of the Arbitration and Conciliation Act by the respondent, questioning the jurisdiction of the Arbitrator to decide the dispute that has been raised by the petitioner arising out of the Joint Development Agreement dated 07.03.2011. Learned counsel for the respondent has also made an endorsement giving the respondent's consent for appointment of an Arbitrator by this Court.

6. No prejudice would be caused if such a liberty is granted by this Court. Learned counsel for the petitioner is also agreeable for the same.



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7. After recording the endorsement made by the learned counsel for the respondent, this Arbitration Original Petition is disposed of, by appointing Mr.Naveen Kumar Murthy, Advocate, as a Sole Arbitrator, to adjudicate the dispute between the petitioner and the respondent arising out of the Joint Development Agreement dated 07.03.2011.

8. For the foregoing, this Court passes the following directions:-

(a) This Court appoints Mr.Naveen Kumar Murthy, Advocate, having office at S2, 2nd Floor, Singapore Plaza, No.164, New No.337, Linghy Chetty Street, Chennai – 600 001, Mobile No.:9884740424, as the Sole Arbitrator, to adjudicate the dispute between the parties arising out of the Joint Development Agreement dated 07.03.2011.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.

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



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ABDUL QUDDHOSE, J.

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(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.

(e) The respondent is granted liberty to file an application under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the jurisdiction of the Arbitrator and also the existence of the valid arbitration agreement between the petitioner and the respondent and the Arbitrator shall consider the said application as a preliminary issue.

30.08.2023

Index: Yes/ No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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