IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.09.2023

Judgment Pronounced on : 16.10.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Arb.O.P.Nos.38 of 2022

Yamini Murugan … Petitioner

Vs.

1.P.Lakshmi Priya

2.The Yercaud
A partnership firm

3.P.Lakshmi Priya
Partner of The Yercaud
A partnership firm

4.Rajesh Sharma
Partner of The Yercaud
A partnership firm ... Respondents

PRAYER in Arb.OP.No.38/2022: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, prays to appoint a suitable qualified person as the sole arbitrator in terms of the arbitration clause 13 in the sale agreement dated 23.09.2017 and arbitration clause 29 in the construction agreement dated 01.11.2017 which are interlinked to each other and part and parcel to each other, in order to adjudicate the dispute between the petitioner and the respondents.

For Petitioner : Mr.K.Shakespheare

For Respondent : Mr.G.Vivekanand for RR1 to 3

: R4 set exparte

ORDER

This Petition has been filed for appointment of an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Arbitration Clause 13 in the sale agreement dated 23.09.2017 and arbitration clause 29 in the construction agreement dated 01.11.2017(which are interlinked) in order to adjudicate the disputes between the petitioner and the respondents.

2. A property by name Priya Plantations at Yercaud, Salem District is owned by the 1st respondent. A partnership firm (2nd respondent) was formed by the 1st and 4th respondents. In her capacity as a partner of the 2nd respondent, the first respondent has been impleaded in her personal capacity and as partner of the 2nd respondent firm. In and around the year 2016, the 1st respondent received a luxurious holiday home resort project called 'The Yercaud' in joint venture/ association with Mir group of companies, to be located at a part of Priya Plantations at Yercaud, Salem

District. After holding discussions with the 1st respondent and the Mir group of companies, the petitioner and her husband M.Murugan were made to convince to venture the project. Accordingly the 1st respondent and 4th respondent had decided to purchase the plot Nos.117A & 117B in the above resort project.

2.1. The above resort project within which the luxury suite type villas namely the Semi-detached villas measuring 1000 sq.ft for a total consideration of Rs.76,00,000/-. This is inclusive of all amenities and rights mentioned in sale and construction agreements. There was no negotiations or discussions in respect of various terms of the above sale and constructive agreement. Both these contracts were in the nature of *'Take it or leave it'* contract. Further the petitioner and her husband namely M.Murugan were not made aware of an one sided arbitration clause favoring the 1st respondent and Mir Builders and Developers Pvt Ltd has been included in the sale agreement and construction agreement respectively. The petitioner made payments totaling to Rs.27,85,001/- on 31.03.2017 and 30.06.2017 to Mir Builders and Developers Pvt Ltd in respect of both the above said sale agreement and construction agreement. The above payments included the entire payment for the land cost. In spite the entire land cost was paid, neither the 1st respondent nor her power of attorney came forward to execute and register the sale deed in respect of plot Nos.117A & 117B in 'The Yercaud' project in the name of the petitioner. But the 1st respondent was giving lame excuses and caused unnecessary delay.

2.2. Even though the petitioner had paid the entire land value and substantial portion of the construction cost, no worthwhile construction was made in plots Nos.117A & 117B. On enquiry the petitioner and her husband were informed by the 1st respondent that disputes had arisen between herself and the Mir group of companies regarding the execution and completion of 'The Yercaud ' project and the project is stalled. Some mediation meetings were held on various dates in the month of July 2017 at Yercaud between the1st respondent and the Mir Group of companies in order to amicably resolve the dispute. However no fruitful result is achieved.

2.3. During the meeting between the 1st respondent and the investors like the petitioner, 1st respondent has showed two legal notices issued to her by Mir Group and Developers Pvt Ltd and told that she was no longer associated with 'The Yercaud' project, as she had terminated the contract between the first respondent and the Mir group of companies. The 1st respondent gave various assurance to the investors for continuing the project. However, no steps have been taken except swindling their money. One side the sale agreement and construction agreement have been entered on 23.09.2017 and 01.11.2017 and the petitioner and other investors were allured. However there are some arbitration clauses in the agreement under Clause 13 of the sale agreement dated 23.09.2017 and clause 29 of the construction agreement dated 01.11.2017. There were some glaring anomaly between the sale agreement dated 23.11.2017 and construction agreement dated 01.11.2017.

2.4. On believing the assurance given by the 1st respondent, the petitioner paid a sum of Rs. 27,85,001/- as advance to the Mir Builders and Developers Pvt Ltd. But in the construction agreement dated 01.11.2017 the 1st respondent had accounted only for the sums of Rs.21,00,000/-. The payments to the tune of Rs.16,85,000/- made to the 1st respondent between 16.08.2017 and 08.09.2017, were not mentioned about the payment schedule of construction agreement dated 01.11.2017. During the month of April 2018 when the site was inspected by the petitioner's husband and other investors, they came to know that there was no work in progress at the project site. So the petitioner, her husband and others met the 1st respondent and asked her to return the amount. Mediation meetings have also been held.

2.5. The 1st respondent has wrongly enriched herself at the cost of the petitioner and others investors. The 1st respondent had requested one year time to complete the said project. However, a police complaint was given by the investors. Since the dispute has arisen between the 1st respondent and the petitioner (investors) the arbitration clause gives the power to the 1st and 2nd respondents to appoint a sole arbitrator of their own choices. Hence the petitioner has sent a legal notice on 14.08.2020 calling upon the respondents to make payments or to refer the matter to mediation. Notice was received by the 1st and 3rd respondents but the 2nd and 4th respondents willfully evaded the notice; however notice was served upon them to their last known address.

2.6. Again the petitioner had given an arbitrator appointment legal notice dated 20.12.2021 by suggesting one Mr.S.Perumal, Senior Advocate, Gandhi Road, Salem as his arbitrator and called upon the respondents to appoint their arbitrator. The 1st and 4th respondent received the notice but failed to appoint their arbitrator. The respondents 2 and 3 managed to return the RPAD. Hence the petitioner has prayed to appoint a suitable person as sole arbitrator in terms of arbitration clause 13 of the sale agreement dated 23.09.2017 and clause 29 of the construction agreement dated 01.11.2017 which are interlinked to each other.

3. The 1st respondent had an acquittance with the Mir group of companies, when she stayed at their resorts at Wayanad, Kerala along with her family in the year 2013. Impressed by the business ideas given by the 4th respondent, who was the managing director of M/s.Mir Holistics Private Limited (MHPL) and M/s.Mir Builders and Development Private Limited (MBDPL). The 1st respondent and the M/s. Mir Holistics Private Limited had entered into a Memorandum of Understanding dated 21.07.2015 with the respondent for joint development of 3.79 Acres.

3.1. As per the agreement entered between the 1st respondent and the Mir Holistics Private Limited, the 1st respondent is not liable to fund the construction. As agreed, the M/s Mir group of companies did not invest sufficient funds and make proper payments. The 1st respondent was treated by the M/s.Mir group of companies even in the petitioners' affidavits, he has admitted that he had discussion and negotiations with Mir group at the time when the project was initiated. Though the petitioner had made payments to Mir Groups companies, he had filed this arbitration proceedings without impleading the Mir Group of companies as party to all the proceedings, hence without their presence this dispute cannot be amicably resolved.

3.2. The petitioners had filed this petition after 3 years of termination of Joint Development Agreement. The petitioners had filed this petition by acting hand in glove with the 4th respondent. The allegations of payment made by the petitioner to these respondents are not true. The 1st respondent is ready to go for mediation provided Mir Groups of companies is also added as a party to the proceedings. Hence this petition should be dismissed.

4.The learned counsel for the petitioner submitted that the petitioner had invested money in view of the assurance given by the 1st respondent about a joint venture undertook by the 1st respondent along with the M/s Mir group of companies. The agreements entered into between the petitioner and the 1st respondent would show that Mir group is not a party to the same. The arbitration clauses found in the sale agreement dated 23.09.2017 and construction agreement dated 01.11.2017 have to be invoked in view of the dispute arose between the petitioner and the 1st respondent. The petitioner has made payments to Mir group only at the instructions of the first respondent and hence, Mir group of companies is an unnecessary party so far as the petitioner is concerned. Even after serving the notice of making repayment or for appointment of arbitrator, the 1st respondent did not come forward to suggest or accept for appointment of arbitrator. Since the petitioners had followed due procedure before filing this writ petition seeking appointment of sole arbitrator, hence the petition should be allowed and the sole arbitrator should be appointed.

4.1. In support of the above contention the petitioners relied on the judgment of the Hon'ble Supreme Court held in **Civil Appeal No.2691 of 2011 arising out of SLP[c] No.34139/2010.**

5.The learned counsel for the respondents 1 to 3 submitted that even as per the submissions made by the petitioner, he had made payments to the Mir groups of companies. Though the Mir group has not signed the alleged agreements dated 23.09.2017 and 01.11.2017 in view of the fact that the petitioner had made payments to Mir group of companies. The Mir group of companies is also a necessary party to this proceedings. Hence the respondent should be allowed to file a petition to implead the Mir group of companies as a party to the proceedings. Before that no order can be passed for appointing an arbitrator.

5.1. The sale agreement dated 23.09.2017 and construction agreement dated 01.11.2017 seemed to have been entered between the petitioner and the 1st respondent. The Mir group of companies is not a party to those agreements. It is claimed by the 1st respondent that Mir group can be impleaded even though he is not a party to the proceedings in view of liability of the Mir group of companies in connection with the project.

5.2. In support of the above contention the 1st respondent relied on the judgment of the Hon'ble Supreme Court held in the case of ***Oil and Natural Gas Corporation Limited Vs. Discovery Enterprises private Limited and another*** reported in ***(2022) 8 Supreme Court cases 42***.

6. The Hon'ble full Bench of the Apex Court in ***Chloro Controls case*** have held, even though the arbitration agreement has been entered into by a company within a group of companies, that can bind the non-signatory affiliates or the sister concerns. In the Full Bench judgment of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Limited Vs. Discovery Enterprises private Limited*** it is so held that if the signatory to the arbitration agreement is one among the group of companies, that will bind the other companies of the same group even if they did not separately sign the agreement.

7. It is not the claim of the 1st respondent or the 3rd respondent that Mir group is one among the group of companies which had signed the agreements. The agreement dated 23.01.2017 and 01.11.2017 have been entered only between the investors like the petitioner and the 1st respondent. It might be true that the petitioner had made payments to Mir group of companies. So far as investors are concerned, the 1st respondent is directly responsible and not the Mir group. Even in the counter it has been stated by the 1st respondent that in connection with the project, she had entered into an agreement with Mir group of companies. It is also learnt that the 1st respondent had taken steps to resolve the dispute between herself and the 4th respondent by way of referring the matter to arbitration.

8. In such context of the matter, the petitioner who are investors with whom the 1st respondent alone made agreements, cannot expect the petitioner to implead the third party as a party to the proceedings. If the 1st respondent revokes or terminates the agreement with Mir group, that will not have any impact upon the petitioner because it is the 1st respondent who alone is a party to the agreements entered between the petitioners and the 1st respondent. So the judgment cited by the respondent will not come to the rescue of the respondent, because of the situations and facts involved in the case in hand is entirely different from the case involved in the above judgment.

9. So it cannot be claimed by the 1st respondent that the termination of agreement between herself and the Mir group would deprive the petitioner from invoking the Arbitration Clause in the impugned agreements. Even after receiving the notice sent by the petitioner by appointing an arbitrator, the 1st respondent did not come forward and suggest any arbitrator of her choice. The 3rd respondent is the partnership firm of the 1st respondent herself and hence, she cannot be viewed as a different party. It seems that 4th respondent is the ex employee of the Mir group of companies who has also been impleaded as a party to the proceedings just for the sake of completion.

10. It is seen from the typed set of papers submitted by the 1st respondent that there are certain proceedings filed under the Arbitration Act and they are pending before the Principal District Court, Salem. So far as this petition is concerned they were carried away by the assurance given by the 1st respondent and in the fact their agreement is only with the 1st respondent who is the signatory of both sale agreement and construction agreement.

11. Since the sale agreement and the construction agreement have arbitration clauses and the respondents did not come forward to subject themselves for an appointment of an arbitrator, the petitioner has filed this petition under Section 11(6) of the Arbitration Act for seeking an appointment of an arbitrator. Since the petitioner had invested money in the alleged project agreed between the petitioner and the 1st respondent and they have entered into a sale agreement and construction agreement in this regard and the same was not completed due to various reasons stated by the parties, dispute has arisen. In view of the arbitration clause found in the sale agreement 23.09.2017 entered into between the 1st respondent and the petitioner, I feel it is appropriate to allow this petition filed by the petitioner by appointing the sole arbitrator.

12. In view of the above stated reasons, this Arbitration Original Petition is **allowed** and this Court appoints **Mr.R.V.R.Deenadayalan, B.A., B.L., District Judge (Rtd),** residing at No.12/J-74, Karikaian Street, Pari Nagar, Jafferkhanpet, Chennai 600 083. (Cell Number: 9489601003 & email. address: Deenan.rvr @ gmail.com) as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per the schedule to the Arbitration & Conciliation Act, 1996. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996. The parties are liable to bear their own costs.

16 .10.2023

jrs

Index: yes/No
Speaking : Yes/No
Neutral:Yes/No

Copy to:

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R.N.MANJULA, J.

jrs

Arb.O.P.No.38 of 2022

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