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Arb. O.P(Com.Div). No.47 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.47 of 2023

R.M.Senthil

... Petitioner

Vs.

P.Ramasudarsan

... Respondent

PRAYER : Original Petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, praying to appoint M/s.D.R.Sivakumar, M.L.F-AICADR, Advocate at No.156, Linghi Chetty Street, II Floor, Kurban Mansion, Chennai – 600 001, as the Sole Arbitrator to adjudicate the claim and dispute between the petitioner and the respondent in terms of Page No.5 of the Arbitration Clause of the agreement dated 11.01.2019 entered into between the petitioner and the respondent and to direct the respondent to pay the costs.

For Petitioner

: Mr.K.R.A.Muthukrishnan

ORDER

This petition has been filed under Section 11 (6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint M/s.D.R.Sivakumar, M.L.F-AICADR, Advocate at No.156, Linghi Chetty Street, II Floor, Kurban Mansion, Chennai – 600 001, as the Sole Arbitrator to adjudicate the claim and dispute between the petitioner and the respondent in terms of Page No.5 of the Arbitration Clause of the agreement dated 11.01.2019



entered into between the petitioner and the respondent and to direct the respondent to pay the costs.

2.Learned counsel appearing for the petitioner would submit that the respondent borrowed a sum of Rs.1 Crore from the petitioner and entered into an agreement dated 11.01.2019. As per the terms and condition of the said agreement, the respondent supposed to repay the said sum of Rs.1 Crore within a period of three years along with interest. The interest payable by the respondent is Rs.2,00,000/- per month on the principal sum starting from 11.02.2019 to 11.01.2021.

3.He would further submit that the respondent paid the interest for a period of two months and thereafter committed default. On 11.07.2019, the respondent issued a cheque for a sum of Rs.8,00,000/- to pay the interest amount from April 2019 to July 2019, but the same dishonored for the reason “insufficient funds”. Subsequently, the petitioner approached the respondent several times and asked to repay the principal amount along with outstanding interest. Despite the respondent undertakes to repay the amount in short period, he fails to do so. Therefore, the petitioner issued a legal notice dated 04.01.2022 through his counsel calling upon the respondent to settle the dues. However, the



respondent neglected to settle the dues. Once again on 30.03.2022, the petitioner sent a legal notice invoking the Arbitration Clause in the agreement dated 11.01.2019, nominating Mr.D.R.Sivakumar, Advocate as Sole Arbitrator to adjudicate the dispute. As there is no response from the respondent, without any other option, the petitioner has approached this Court.

4.Though notice has been served and the name of the respondent is printed in the cause list, none appeared on behalf of the respondent before this Court, which shows that the respondent is not interest to prosecute the case. Therefore, this Court proceeds to pass following orders.

5.Upon hearing, it is seen that the respondent has borrowed a sum of Rs.1 Crore from the petitioner and entered into an agreement dated 11.01.2019. As per the terms and conditions of the agreement dated 11.01.2019, the respondent has to pay an interest of Rs.2,00,000/- per months, till the repayment of the principal amount. The respondent has agreed to repay the principal amount of Rs.1 Crore within a period of three years. Since, the respondent committed default in making payments, the petitioner has called upon the respondent several times to make the payments of their outstanding dues. For which, the respondent used to assure the respondent to settle the dues



in a short period, but, failed to do so. Therefore, the petitioner sent a legal notices dated 30.03.2022, invoking the Arbitration Clause as per the agreement dated 11.01.2019 and requested the respondent to give consent to appoint the Sole Arbitrator nominated by him. Even then, the respondent has not responded. Therefore, the petitioner has come before this Court seeking to appoint Sole Arbitrator in terms of the Arbitration Clause mentioned in Paragraph No. 5 of the agreement dated 11.01.2019.

6.For better appreciation, Arbitration Clause of the agreement dated 11.01.2019, is extracted hereunder:

“Arbitration:

All / any claims, disputes, controversies, and / or differences arising between the parties hereto out of or in relation to or in connection with the agreement and all the related matters thereof, which cannot be satisfactorily settled by mediation / conciliation between the parties hereto, shall be referred to adjudication by a Sole Arbitrator to be appointed by mutual consent of all parties hereto and the arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 (as amended from time to time).

If the parties fails to agree upon the appointment of a Sole



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Arbitrator, then any one of the parties to this Agreement can approach the Madras High Court for appointment of an Arbitrator. The venue of arbitration will be Chennai and the language of arbitration shall be English. Investor and Borrower shall equally contribute towards the costs of arbitrator fees and shall bear their respective legal costs.”

7.In view of the above submissions and a perusal of the Arbitration Clause of the agreement dated 11.01.2019, it is clear that the present dispute is arbitable in terms of the said agreement. Hence, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.

i) Accordingly, **the Hon'ble Mr.Justice K.Mohan Ram, Former Judge, Madras High Court, residing at “ISHANA”, Plot No.15B, Radiant Avenue, 5th Street, VGP Golden Beach Layout, Injambakkam, ECR, Chennai -11. (Contact No.9444464646),** is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall 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, without influencing any of the observations made by this Court in this



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order.

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iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) In the event of non-appearance of the respondent herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent herein.

8.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

09.03.2023

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Note: Issue Order Copy on 15.03.2023.



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KRISHNAN RAMASAMY. J.,
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