



Arb.O.P.No.1 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.01.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

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S.Kuppuraj
Flat No.2 Door nO.26,
Old No.32/2, Third Trust Cross Street,
Mandavelipakkam, Chennai-600 028.

... Petitioner

-VS-

M.Kalanidhi
T-7, 94, Tilakar Street,
Thiru Nagar, Jaffer Khanpet,
Chennai-600 083.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, pleased (a) to set aside the part of the unnumbered arbitration award dated 21.11.2020 to the extent of discharging the Respondent to pay the Award amount; (b) to direct the Respondent to pay the cost of the proceeding and (c) pass further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



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For Petitioner : Mr.S.Namasivayam

For Respondent : Mr.Vargees Amalraja

ORDER

The petitioner assails an order dated 21.11.2020 of Mr. AR. Prasad N. Yadav, which the petitioner describes as an arbitral award.

2. Since the petitioner intended to construct a house, he was referred to Mr.Prasad N. Yadav, an architect, who, in turn, referred the petitioner to a builder, the respondent herein. Pursuant thereto, a construction agreement dated 22.01.2018 was executed by the petitioner and the respondent herein. It appears that disputes arose in relation thereto, both with regard to the construction schedule and payments claimed by the respondent herein. Since Mr.Prasad N. Yadav was the architect who had recommended the name of the contractor, an e-mail of 18.10.2020 was addressed by the respondent to the architect. Pursuant to such e-mail, a meeting was scheduled by the architect on 20.10.2020 to sort out outstanding issues. It appears that the order dated 21.11.2020 was issued pursuant thereto.



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3. Learned counsel for the petitioner states that the arbitration clause in the construction agreement was not invoked by the respondent by issuing notice under Section 21 of the Arbitration and Conciliation Act 1996 (the Arbitration Act). He further states that no statement of claim was presented before the arbitral tribunal by the respondent and the petitioner was also not granted the opportunity of filing a statement of defence in response thereto. In these circumstances, he states that the order dated 21.11.2020 is unsustainable and is liable to be set aside.

4. Learned counsel for the respondent admits that the proceedings before Mr.Prasad N. Yadav were not preceded by a notice under Section 21 of the Arbitration Act. He also admits that no statement of claim was presented before the arbitral tribunal. The construction agreement admittedly contains a provision for arbitration. In fact, the said clause provides for arbitration by Mr.Prasad N. Yadav. In the absence of a Section 21 notice to the petitioner herein, no arbitral proceedings commenced. The admitted position is that the parties did not submit a statement of claim and



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statement of defence, respectively, before the arbitral tribunal. Thus, there is no doubt that the arbitral proceedings were not conducted in the manner envisaged by the Arbitration Act and the parties were not provided a reasonable opportunity to present their respective cases. Therefore, there is sufficient reason to set aside the order dated 21.11.2020.

5. Hence, Arb.O.P.No.1 of 2022 is allowed by setting aside the order dated 21.11.2020, which is described as an arbitral award. It will be open to either party to initiate arbitration proceedings in accordance with law. There will be no order as to costs.

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Index :Yes/No

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SENTHILKUMAR RAMAMOORTHY,J

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