



Arb. O.P. (Com. Div.) No. 498 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P. (Com. Div.) No. 498 of 2022

M/s. Galada Finance Limited,
Old No. 4, New No. 7,
Shaffee Mohammed Road,
Thousand Lights,
Chennai – 600 006.
Rep. by its Authorised Signatory,
Mr. M.Karthik

... Petitioner

Vs.

1. Mr. Y.V.Saravanan

2. Mrs. Priya Sudhakar

3. Mr. L.Thandavarayan
Respondents

...

PRAYER: This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said agreement dated 04.05.2018.

For Petitioner : Mr. M.Arunachalam

For Respondents : No appearance



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ORDER

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The present petition has been filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Since the notice sent to the respondents has returned unserved, paper publication has also been effected and despite printing the name of the respondents, no one has entered appearance on behalf of the respondents. It clearly shows that the respondents are not interest in contesting the matter. Therefore, this Court proceeded to decide the matter.

3. According to the petitioner, the petitioner has been sanctioned the loan vide sanction letter dated 04.05.2018. Thereafter, the respondents have defaulted the repayment of loan, and hence, the entire was foreclosed and a demand notice was issued on 21.08.2019 calling upon the respondents to pay a sum of Rs. 4,44,309/-. However, the respondents have failed to come forward to settle the outstanding dues. Thus, the present application and the present dispute is arbitrable in terms of Article 20.1 of the hypothecation agreement dated 09.09.2016 entered between the petitioner and the respondents, which reads as follows:-



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“20.1. All disputes, differences and/or claim arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this agreement.

It is a terms of this agreement that in the events of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.”

By referring to the said clause, learned counsel for the petitioner submits that Mr. K.S.Gowthaman, who was initially appointed as the Sole Arbitrator, had refused to act as Sole Arbitrator by letter dated 12.12.2019 and Mrs. C.Deepa Nandhini, who was thereafter appointed as the Sole Arbitrator on 09.01.2020, had refused to act as Sole Arbitrator by letter dated 11.03.2022 and thereafter, the petitioner



had sent a letter dated 12.03.2022 to the respondents requesting them to select one of the three Arbitrators suggested by the petitioner. However, no response has been received from the respondents. Since the petitioner could not arrive at any consensus with the respondents to appoint a sole arbitrator, he has approached this Court, though he has been provided with the right to appoint the Sole Arbitrator.

4. Considering the submissions made by learned counsel for the petitioner and in view of the fact that the present dispute is arising out of agreement dated 09.09.2016 entered between the petitioner and the respondent, this Court feels that the present dispute is arbitrable in terms of Article 20.1 of the said agreement. Accordingly, this Court passes the following order:

i) Mr. Sharath Chandran, Advocate, Gokulam, No. 3, Gopala Menon Street, Vepery, Chennai – 600 008, Contact No. 98844 45442 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Sole 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.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same



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shall be borne by the parties equally. In the event of the respondents not coming forward to appear before the learned Sole Arbitrator, the petitioner shall bear all the charges including the remuneration of the learned Sole Arbitrator and thereafter, reimburse the share of the respondents from them.

iv) That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

5. 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 learned Sole Arbitrator.

02.01.2023

vjt

Note: Issue order copy on 09.01.2023.

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order



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Mr. Sharath Chandran,
Advocate,
Gokulam, No. 3, Gopala Menon Street,
Vepery,
Chennai – 600 008.



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KRISHNAN RAMASAMY, J.

vjt

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