



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA
Arb.O.P.No.22 of 2022

1.Yashodha
2.Maheshwari
3.Thara Prakash
4.Prabhu
5.R.Ramakrishnan

... Petitioners

Vs.

1.Sharadha
2.Saraswathi
3.Sasi Rekha
4.Chandra Kala
5.Sai Parishath
6.Mrs.Janaki Bheemraj
7.Mrs.Parvathy Balakrishnan

... Respondents

PRAYER: Petition filed under Section 11(6) of the Arbitration and Conciliation act, prays to appoint a Retired District Judge as Sole Arbitrator to adjudicate the disputes that have arisen between R.Chandran and R.Ramakrishnan and H.B.Raju Gowder, B.R.Habbi, Mrs.Janaki Bheemraj, Mrs.Parvathy Balakrishnan pursuant to the memorandum dated 04.06.1999.

For Petitioners : Mr.P.R.Dhilip Kumar



WEB COPY

For Respondents : Mr.Sesubalan for R1 & R5

No appearance for R2 to R4 and R6 & R7

ORDER

This original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act seeking to appoint an arbitrator to adjudicate the disputes between the petitioners and the respondents in terms of the arbitration agreement dated 30.07.2022.

2. The petitioners are the legal heirs of late R.Chandran and R6 and R7 are the daughters of late H.B.Raju Gowder. H.B.Raju Gowder was allotted properties via oral partition before the death of Bellie Gowder. According to the petitioners, the 5th petitioner and the late father of the 2nd to 4th petitioners and the late father of the respondents 2 to 5 had actively supported and assisted late H.B.Raju Gowder to cultivate the agricultural lands that were allotted to them along with other lands that were taken on lease. The 5th petitioner, late father of the 2nd to 4th petitioners along with late H.B.Raju Gowder and the late father of the respondents 2 to 5 were the members of Hindu joint family.

2.1.In April 1998, M/s.Good shepherd Public School approached the



members of the joint family to purchase 11 Acres 20 Cents of lands in Ootacamund Rural. After postponing several negotiations, H.B.Raju Gowder along with the father of the respondents 2 to 5, without the consent of the petitioners had conveyed 11 Acres 20 Cents in favour of Good shepherd Public School. Since a dispute arose between the family members, they approached an Advocate by name Mr.N.Krishnamoorthy to resolve the dispute and hence, a conciliation meeting was held. In the said meeting H.B.Raju Gowder offered to pay Rs.15,00,000/- to each of the petitioners and promised to invest the balance sale consideration of Rs.1,50,00,000/-. The fifth petitioner and the father of the petitioners 2 to 4 agreed for the terms and affixed their signatures in the typed set of papers.

2.2. H.B.Raju Gowder had invested Rs.60,00,000/- for construction of a new house at HBR Colony and had liquidated cash of not less than Rs.40,00,000/. A memo of agreement is entered into between the families and the parties have agreed to settle the dispute, differences etc., by way of arbitration proceedings by appointing an Arbitrator. Accordingly, three Arbitrators were appointed, out of which, one Arbitrator expressed his inability to continue as an Arbitrator. The remaining two Arbitrators



decided the issue and passed an award on 12.04.2007. The father of the respondents 2 to 5 issued a notice to the two Arbitrators stating that criminal action will be taken against them for passing an illegal award.

2.3. The father of the respondents 2 to 5 have filed an Original Petition in O.P.No.20 of 2007 before the District Court of Ootacamund to set aside the arbitral award and got the award set aside. As per the order of the Court, the third Arbitrator was also appointed and that was also objected by the father of the respondents 2 to 5 and he filed an appeal against the said order and the same is pending. However, the third Arbitrator also had recused himself. The parties attempted to amicably resolve the matter, but they did not arrive at any settlement. Hence this Petition has been filed to appoint a new Arbitrator in the place of the Arbitrator who withdrew his position.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents 1 and 5 and perused the pleadings and material placed on record.



WEB COPY

4. The involvement of the Arbitrator started from the order of the District Court dated 19.02.2007 made in I.A.No.50 of 2005 in O.S.No.101 of 2005. Subsequently, notice was sent to three Arbitrators, out of which, one Arbitrator by name Krishnamoorthy recused himself due to health issues. The Award was passed by the remaining two Arbitrators.

5. The said Award was set aside by the Court by stating that the award was passed in violation of Section 10 of the Act and remitted it back to the same Arbitrators. However, the third Arbitrator was also appointed by the order of Hon'ble Chief Justice dated 05.09.2014 in the application taken out by the fifth petitioner and the father of the petitioners 2 to 4 in O.P.No.187 of 2011. The Arbitrator appointed by the Hon'ble Chief Justice also recused himself and hence the matter once again reverted back to the appointment of the Arbitrator.

6. The respondents did not file any counter and both the parties did not come with any choice of Arbitrator.

7. Hence, this Court appoints **Mr.Ponram Rajaa, M.A. B.L.,**



WEB COPY

Standing Counsel for Government of Tamil Nadu District Consumer Courts, Chennai, residing at Plot No.32-A, G-2, Priyanka Homes, Thiruvalluvar Street, (Gandhi Road), Velachery, Chennai - 600 042, (Mobile Numbers : 9677245241, 9841787100 & 9282109101) as an 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.

8. This Original Petition is **allowed** accordingly and the parties are liable to bear their own costs.



WEB COPY
gsk

11.07.2023



WEB COPY



R.N.MANJULA, J.

gsk

Copy to:

Mr.Ponram Rajaa, M.A. B.L.,
Standing Counsel for Government of Tamil Nadu
District Consumer Courts, Chennai,
Plot No.32-A,
G-2, Priyanka Homes,
Thiruvalluvar Street, (Gandhi Road),
Velachery, Chennai - 600 042.

Arb O.P.No. 22 of 2022

11.07.2023