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Arb.O.P. (Com.Div.) No.437 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.437 of 2023

S.Kumaravel

.. Petitioner

Vs.

1.S.Padmanaban

2.S.Shanmuganathan

.. Respondents

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the construction agreement dated 16.02.2022 and for a direction to the respondents to pay the costs.

For Petitioner : No appearance

For Respondents : No appearance

ORDER

This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the



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disputes between the petitioner and the respondents in terms of the construction agreement dated 16.02.2022 and for a direction to the respondents to pay the costs.

2.No representation on behalf of the petitioner. Despite the service of notice on the respondents and their names are printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

3.However, in the previous occasion on 29.11.2023, Mr.R.Barnabas, learned counsel appeared on behalf of the respondents and undertook to file vakalat on behalf of the respondents. Till date, no vakalat has been filed on behalf of the respondents.

4.This Original Petition has been filed to appoint an Arbitrator in terms of Clause 14.1 of the Construction Agreement between the petitioner and the respondents dated 16.02.2022. Clause 14.1 of the Construction Agreement between the petitioner and the respondents dated 16.02.2022 reads as under:-



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“14.1 In case of any dispute arise between the LAND OWNERS and the DEVELOPER, the same shall be resolved through a conciliation process between the Parties. Should there be a failure of this process, matter shall be referred to and settled by Arbitration under the provisions of The Arbitration and Conciliation Act, 1996. In such case, the Owners shall jointly appoint an arbitrator and the Developer shall appoint an arbitrator. The two arbitrators so appointed shall nominate the third arbitrator. The arbitration shall be conducted in English and the venue of arbitration shall be Chennai.”

5.The petitioner has also issued notice to the respondents under Section 21 of the Arbitration and Conciliation Act, 1996 on 15.05.2023 and on 26.05.2023 for which the 2nd respondent alone had replied on 18.06.2023.

6.Having replied, the 2nd respondent has thereafter not approached this Court to appointment of Arbitrator in terms of Clause 14.1 of the Construction Agreement dated 16.02.2022.

7.Clause 14.1 of the Construction Agreement dated 16.02.2022 contemplates to appoint an Arbitrator by Arbitral Tribunal consisting of



three Arbitrators. The respondents have forfeited their rights for appointing the Arbitrator. The petitioner has nominated Mr.M.Aiyyadurai as an Arbitrator.

8.Now considering the fact that the petitioner had nominated Mr.M.Aiyyadurai as Co-Arbitrator, Court is inclined to appoint **Mr.SP.Chockalingam, Advocate (Mobile No.: 98401 21245)** residing at **No.A-1, New # 348, Old # 160, Thambu Chetty Street, Chennai – 600 001** as an Arbitrator on behalf of the respondents. The two Arbitrators shall proceed to appoint the presiding Arbitrator and thereafter proceed to Arbitrate the dispute between the parties hereto.

9.The parties are directed to pay the fees in accordance to the schedule of the Arbitration and Conciliation Act, 1996 and also arrive at the fees payable with the consent of the Arbitrator.

10.With the above observations, the Original Petition stands allowed. No costs.



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11. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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C.SARAVANAN, J.

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