



Arb.O.P (Com.Div.) No.87 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.87 of 2023

Nabkisan Finance Limited,
Ground Floor,
NABARD Tamil Nadu Regional Office Building,
No.48, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
rep. by its Officer Shri. D.Dhanasekar

... Petitioner

Vs.

1. Rural Education Awareness and Development Society,
rep. by its Secretary P.Dhanaraj,
17, Sivan Koil West Street,
Kokkirakulam, Tirunelveli- 627 009.

2. P.Dhanaraj
17, Sivan Kovil West Street,
Kokkirakulam, Tirunelveli- 627 009.

3. M.S.Manian
100/13, Vadamalasamudram
Vickramasingapuram,
Ambasamudra Taluk,
Tirunelveli - 627 401.

... Respondents



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Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the dispute that had arisen between the petitioner and the respondents.

For Petitioner : M/s.S.Gopinath

For Respondents : Mr.P.Vedachalam, no appearance

ORDER

This Arbitration Original Petition has been filed seeking to appoint an Arbitrator to adjudicate the dispute that had arisen between the petitioner and the respondents.

2. The case of the petitioner is that the petitioner is a non-banking Financial Institution extending loan facility to the Farmer's Association. The first respondent borrowed a sum of Rs.35,00,000/- by entering into a loan agreement dated 15.02.2017, with the petitioner, for which, the 2nd and 3rd respondents stood as guarantors by executing memo of deposit of title deed, dated 22.07.2017. Since the first respondent has been negligent in repaying of the loan, and out of the borrowed amount of Rs.35,00,000/-, the first respondent has to pay Rs.32,35,702/- as on date, the petitioner initiated arbitration proceedings by invoking the arbitration clause.



WEB COPY 3. Mr.S.Gopinath, learned counsel appearing for petitioner would submit that the first respondent borrowed a sum of Rs.35,00,000/-. As on date, the first respondent has to pay Rs.32,35,702/-. In this regard, they have sent a legal notice, dated 11.08.2021, with regard to the initiation of arbitration proceedings by nominating an Arbitrator, Mr.R.Jayaprakash, to adjudicate the dispute. Since no response was forthcoming from the respondents, the petitioner presumed the silence of the respondents as acceptance for appointment of the sole arbitrator. However, when the petitioner filed claim against the respondents before the sole arbitrator and particularly, when the learned Arbitrator issued notice to respondent calling for counter claim, the first respondent raised objections with regard to the unilateral appointment. Pursuant to which, the learned Arbitrator withdrew himself from appearing in the arbitral proceedings. Hence, the present Original Petition.

4. After filing of this petition, notice was ordered and served to the respondents and the names of the respondent were also printed in the cause



list. However, none appeared on behalf of the respondents. Therefore, this

Court proceeds to hear the learned counsel for the petitioner and pass orders.

5. Upon hearing the learned counsel appearing for the petitioner and perusal of the loan agreement, dated 15.02.2017, it is clear that the dispute has arisen out of the said loan agreement, dated 15.02.2017, the same is arbitrable in terms of clause 2 (j) (3) of the said agreement, which reads as follows:

“ In the event of a dispute, difference or claim between the parties hereto, arising out of this Agreement or in any way relating hereto, or any term, condition or provision herein mentioned or the construction or interpretation thereof or otherwise in relation hereto, the Parties shall first endeavor to settle such difference, dispute, claim or question by mutual discussion, failing which the same shall be referred to arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. NKFL shall appoint a sole Arbitrator to conduct the arbitration proceedings. The Place of arbitration shall be Chennai and any award whether interim or final, shall be made, and shall



be deemed for all purposes between the Parties to be made, in Chennai. The arbitral procedure shall be conducted in English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian Law. The award of the arbitrator shall be final and conclusive and binding upon the parties."

6. In view of the above, this Court is inclined to appoint an Arbitrator to adjudicate the disputes between the parties. Accordingly, this Court feels it appropriate to pass the following order:-

i) Ms.M.Rajalakshmi, District Judge (Rtd), No.25, M.G.R. Road, Sri Ramachandran Road, Kalashethra Colony, Besant Nagar, Chennai 600 090, Mobile No:8754920985, is appointed as sole 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. The learned Arbitrator is also directed to decide the matter



without influenced by any of the observations made by this Court in the present order.

iii) The learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

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

v) Since this Court has appointed an Arbitrator, it is open to the petitioner/s as well as the respondent herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.

7. This Application is ordered, accordingly, leaving the parties to



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bear their own costs.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
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