



Arb.O.P (Com.Div.) No.419 of 2023 and O.A. Nos.1 and 2 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.419 of 2023
and O.A. Nos.1 and 2 of 2023

V.S.Kylas

... Petitioner

Versus

1.Ms.Rohit Builders,
rep. by its Proprietor K.R.Rajagopalan

2.V.S.Premkumar

3.Chithra Venkateswaran

4.Srilata Ramesh

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the first respondent in terms of Arbitration Clause as found in Clause 8.17 of the Joint Development Agreement dated 26.02.2020.



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For Petitioner : Mr.C.Prasanna Venkatesh

For R1 : Mr.K.S.Elangovan

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.

2.The petitioner and the respondents 2 to 4 are the owners of the property and the first respondent is a Developer. The petitioner and the respondents 2 to 4 have entered into a Joint Development Agreement dated 26.02.2020 with the first respondent. There seems to be a dispute arising out of the same. It is an admitted fact that there is an Arbitration Clause available in the Joint Development Agreement dated 26.02.2020, which is extracted hereunder:

'8.17 All the disputes and claims arising in respect of the implementation of the provisions of this agreement shall be referred for arbitration in accordance with the provisions of Arbitration and Conciliation Act 1996 by a Sole Arbitrator to be appointed by mutual consent of the parties failing which the



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Arbitrator shall be appointed by the High Court of Judicature at Madras.'

3.The petitioner has also invoked Arbitration in accordance with the Arbitration Clause by issuing notice to the first respondent on 01.11.2022. A reply has also been received from the first respondent on 04.11.2022. Since there was no consensus with regard to the name of the Arbitrator, this petition has been filed by the petitioner seeking for appointment of an Arbitrator by this Court under Section 11 of the Arbitration and Conciliation Act.

4.Learned counsel for the first respondent, on instructions, would now submit that the first respondent is agreeable for appointment of an Arbitrator by this Court to adjudicate the dispute arising out of the Joint Development Agreement dated 26.02.2020. Admittedly, there is a valid arbitration clause in the Joint Development Agreement dated 26.02.2020, which is the subject matter of the dispute between the petitioner, the respondents 2 to 4 and the first respondent. The petitioner has also invoked arbitration in accordance with the arbitration clause by issuing notice to the



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first respondent on 01.11.2022 and a reply has also been sent by the first respondent to the same. Admittedly, there has been no consensus between the parties with regard to the name of the Arbitrator. Since there is a valid arbitration agreement, this Court will have to necessarily appoint an Arbitrator to adjudicate the dispute between the parties arising out of the Joint Development Agreement dated 26.02.2020.

5.In view of the order passed under Section 11 of the Arbitration and Conciliation Act, 1996, Section 9 Applications, i.e. O.A. Nos.1 and 2 of 2023 are closed by giving liberty to the first respondent to file a similar application under Section 17 of the Arbitration and Conciliation Act before the Arbitrator. The other parties are also granted liberty to file similar applications under Section 17 of the Arbitration and Conciliation Act before the Arbitrator.

6.For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a)This Court appoints Hon'ble Mr.Justice V.Parthiban, Former Judge



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of this Court, having Office address at No.5069, 12th Street, Z Block, Anna Nagar, Chennai - 600 040, Mobile No.9444094401 as the Sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the Joint Development Agreement dated 26.02.2020, on merits and in accordance with law.

(b)The Arbitrator shall be paid his remuneration / fees by mutual agreement between the parties.

(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

21.09.2023

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ABDUL QUDDHOSE, J.

vga

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