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Arb.O.P(Com.Div.)No.425 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.425 of 2023

M/s.Sakthi Finance Limited,
Represented by its Authorised Signatory ... Petitioner

Vs.

1.Abin Kumar

2.Arulraj

3.S.Xavier ... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said Agreement dated 18.09.2019 in respect of contract bearing No.NGLHP/555193.

For Petitioner : Mr.M.Arunachalam

For Respondents :

For R1 : Mr.M.Dinesh Kumar



ORDER

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The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator to adjudicate upon the differences and disputes between the parties under the said Agreement dated 18.09.2019 in respect of contract bearing No.NGLHP/555193.

2. There is a request for adjournment by the learned counsel for the first respondent stating that the counsel on record is from Kanyakumari District.

3. The notice on the third respondent has been refused. It appears that the first respondent is the borrower of loan under a Hire Purchase Agreement dated 18.09.2019 with the petitioner. The second and third respondents are the guarantors under the aforesaid Hire Purchase Agreement. Clause 16(a)(b) of the Hire Purchase Agreement contemplates a mechanism for resolving the dispute through arbitration. It reads as under:-

"16. a) All disputes, differences and/or claims, arising out of this Hire Purchase Agreement whether during its subsistence or thereafter shall be settled by Arbitration in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the SAKTHI FINANCE LIMITED. The award given by such an Arbitrator shall be final and binding on all the parties to the Agreement.



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It is a term of this Agreement that in the event of such an Arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the SAKTHI FINANCE LIMITED at the time of such death of the Arbitrator or 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.

b) The venue of Arbitration proceedings shall be at Coimbatore."

4. It appears that after a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued on 01.08.2023, the first respondent has proceeded to file O.S.No.132 of 2023 before the District Munsif Court, Kuzhithurai for a bare injunction.

5. The learned counsel for the petitioner submits that an application under Section 8 of the Arbitration and Conciliation Act, 1996 has been filed.

6. Having considered the arguments advanced by the learned counsel for the petitioner and the oral objection of the learned counsel for the first respondent and considering the Hire Purchase Agreement dated 18.09.2019 which contains the aforesaid clause for resolution of dispute through arbitration, this Court is of the view, the respondents have forfeited their rights



for appointing Arbitrators.

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7. Considering the same, this Court is inclined to appoint **Mr.Arun Kurian Joseph, Advocate, Enrollment No.1011/2002, having Office at No.21, Mahatma Gandhi Road, Nungambakkam Kothari Bagh, Chennai - 600 034, Mobile No.72990 12344**, as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

8. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

9. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same



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shall be borne by the parties equally. In case, the respondents remain *ex parte*,

the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

10. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

11. Since this Court has appointed the 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.

30.11.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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