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Arb. O.P(Com.Div). No.625 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.625 of 2022

1.B.Vimala Devi
2.B.Ashok Kumar Jain
3.B.Chandra Devi
4.B.Narendra Kumar Jain
5.B.Praveen Kumar Jain

... Petitioners

Vs.

Thatha Elayalwar Chett's Charities,
Represented by its Managing Trustees & Trustees,

1.A.Sudhakar

2.K.Sri Hari

Door No.46, Narayana Mudali Street,
Sowcarpet, Chennai – 600 079.

... Respondent

PRAYER : Original Petition is filed under Section 14 r/w 15 of the Arbitration and Conciliation Act, 1996, praying to terminate the mandate of the learned Sole Arbitrator appointed under lease deed dated 27.08.2012 and substitute the Arbitrator in the place of Mr.N.Nandan appointed by this Court vide order dated 23.02.2022 in Arb.O.P(Com.Div).No.34 of 2022.

For Petitioners	: No Appearance
For Respondent	: Mr.P.C.Harikumar for M/s.P.C.Harikumar & Associates

ORDER



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This petition has been filed by the petitioners under Section 14 r/w 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “the Act”), seeking to terminate the mandate of the learned Sole Arbitrator appointed under lease deed dated 27.08.2012 and substitute the Arbitrator in the place of Mr.N.Nandan appointed by this Court vide order dated 23.02.2022 in Arb.O.P(Com.Div).No.34 of 2022.

2. When the matter came up for hearing on 22.02.2023, this Court passed the following orders:

“Learned counsel appearing for the applicants as well as the respondent argued sometimes and after the arguments, it has come to the light that the applicants have not paid the fee of the Arbitrator and the cost of Rs.1,35,000/- as ordered by the learned Arbitrator while dismissing the petition filed by the applicants under Section 12 of the Arbitration and Conciliation Act,1996. Further, the learned Arbitrator in the minutes of the seventh sitting held on 02.11.2022, has stated that if the cost of Rs.1,35,000/- is not paid by the applicants herein, their statement of defence will be struck off.

2.Learned counsel appearing for the applicants



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would submit that for non-payment of the costs, it is not a course to struck off the statement of defence.

3.Learned counsel appearing for the respondent would fairly submit that, in the event the costs of Rs.1,35,000/- and the fees of the Arbitrator are paid, he has no objection in setting aside the order passed by the Arbitrator and consequently to take the defence on record.

4.With regard to the striking off the statement of defence, the respondent counsel seeks time to get instructions and make his submissions.

5.Post the matter on 06.03.2023.”

3.The above order came to be passed since the petitioner agreed to pay the costs of Rs.1,35,000/- and the fees of the learned Arbitrator and in such case, the respondent agreed to terminate the mandate of the Arbitrator. Thereafter, the matter is listed on 08.03.2023, on the said date, at the request of the petitioner, the matter got adjourned to 16.03.2023 under the caption “For Orders”. Accordingly, the case is listed today. Today, there is no representation for the petitioner and the costs also not paid by the petitioner till date.

4.Upon hearing and perusal of the affidavit, this Court is of the



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considered view that no case is made out on merits. Further, if the petitioners agreed to make the payment as ordered of the learned Arbitrator, the petitioners supposed to participate in the Arbitral proceedings and if the petitioners are aggrieved over the rejection of the application filed by them under Section 12 of the Act, the right course open to them is to challenge the same under Section 34 of the Act. Under such circumstances, this Court is not inclined to entertain this petition.

5. Accordingly, this Arbitration Original Petition stands dismissed.

16.03.2023

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KRISHNAN RAMASAMY. J.,



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