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A. No.5438 of 2023
in C.S.No.34 of 2022

N.SATHISH KUMAR, J.

This application has been filed under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to arbitration to be conducted in accordance with the Arbitration Clause in the Construction Agreement.

2. This application is taken out mainly on the ground that the parties have agreed, in a construction agreement, to refer the dispute to the arbitration, when there is any dispute between the parties in respect of the construction.

3. The suit has been filed claiming damages mainly on the ground of deficiency of workmanship by the defendant company resulting in the accident to the 2nd plaintiff.

4. The second plaintiff while trying to take her car out had got her legs caught between the protruding rods near a man-hole cover in the car parking area, slipped and fell down thereby injuring her right elbow.



According to the plaintiffs, the defendants have not constructed the construction properly. Hence, the suit has been filed for claiming damages.

5. The learned counsel for the applicants/defendants took notice of this Court to the Construction Agreement entered into between the plaintiffs and defendants. On perusal of the same, Clause 30 of the Construction Agreement reads as follows:

"30. CORRESPONDENCE

The ALLOTTEES/PURCHASERS agrees that any correspondence sent by Registered post to the ALLOTTEES/PURCHASERS at the address shown in the description of parties or any other address duly intimated in writing by the ALLOTTEES/PURCHASERS shall be deemed to have been duly served on the ALLOTTEES/PURCHASERS.

Any dispute, controversy, claim or disagreement of any kind whatsoever between or among the parties in connection with or arising out of this agreement or any of the Project Agreements or the breach, termination or invalidity thereof shall be referred to and finally resolved by Arbitration irrespective of the amount involved in the dispute or whether



such disputes would otherwise be considered justifiable for resolution by any Court. The Parties expressly agree that they shall attempt to resolve through good faith any such disputes between the parties by mutual discussions. In the event of a deadlock, both Parties shall nominate an Arbitrator of their choice and the nominated Arbitrators shall appoint a presiding Arbitrator who shall decide the dispute so referred in accordance with the Arbitration and Conciliation Act, 1996 (Act 26 of 1996).

The seat of the Arbitration shall be at Chennai and shall be in English language. The Parties agree that the Arbitration Award so passed by the Presiding Arbitrator shall be final and binding on both the Parties."

6. Since, the primary dispute is with regard to the deficiency of service and deficiency of workmanship in the construction, this Court is of the view that as the parties have agreed to refer the dispute, arising out of construction agreement, the parties are relegated to the arbitration. At this stage, as agreed by both sides, it is ordered as follows:

i) that Hon'ble Mr.Justice V.Bharathidasan

[Retd.], High Court, Madras, residing at New No.22



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(Old No.L-45), II Main Road, Kamaraj Nagar,
Thiruvannamipur, Chennai – 600 041, Mobile No. 94443
83139, 94455 00224 is appointed as a Sole Arbitrator
to enter upon reference and adjudicate the matter.

ii] that 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.

iii] That the learned Sole Arbitrator appointed
herein shall be paid fees as per the schedule and the
same shall be borne by the parties equally.

7. Accordingly, this application is allowed and the main civil suit is
rejected.

07.11.2023

dhk

Copy to:

Hon'ble Mr.Justice V.Bharathidasan [Retd.], High



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Court, Madras,
New No.22 (Old No.L-45),
II Main Road, Kamaraj Nagar,
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