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Arb.OP(Com.Div.)No.97 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2024

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Arb.OP(Com.Div.) No.97 of 2022

S.Vasanth

... Petitioner

Vs.

E.Jayaraj

... Respondent

Prayer: Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, seeking to appoint an arbitrator on the subject matter of the agreement dated 23.11.2017 and the supplemental agreement dated 26.10.2018 in respect of the claims raised as against the respondent as per clause 34 of the original agreement so as to pass appropriate award forthwith.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.C.Senapathi

ORDER

This petition has been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator on the subject matter of the agreement dated 23.11.2017 and the supplemental agreement dated 26.10.2018 in respect of the claims raised as against the respondent as per clause 34 of the original agreement so as to pass appropriate award forthwith.



2. The petitioner states that a joint venture agreement was entered between the petitioner and the respondent on 23.11.2014 and also entered into supplementary agreement dated 26.10.2018, in respect of construction of flats. The petitioner cites the arbitration clause in the original agreement dated 23.11.2014 and submits that the dispute which has arisen between the petitioner and the respondent herein is liable to be referred to arbitration in terms thereof. The relevant clause in the agreement deed is set out below:-

"34. Any dispute between the parties to this agreement in regard to the interpretation of this agreement and of any matter/claim arising out of this agreement shall be referred to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 and amended as on date, to a sole Arbitrator. He may be appointed by the owner and the promoter on consensus. The cost of such Arbitration proceedings and fees payable to the Arbitrator shall be shared equally. Any award given in any such arbitration proceedings shall be final and binding on the parties to this agreement. The venue of the arbitration proceedings shall be the city of Chennai only."

3. The petitioner also points out that a notice dated 22.10.2021 was issued to the respondent calling upon him to consent for appointment of sole arbitrator to go into the issue as per the terms of the agreement. However, on receipt of the same, there is no reply from the respondent.



4. Notice was ordered on the respondent on 08.03.2022 and the learned counsel appearing for the respondent also present before this Court today. Therefore, there is no impediment to proceed with the matter.

5. On perusal of clause 34 of the agreement deed dated 23.11.2017, it is evident that the disputes are required to be resolved through arbitration. The petitioner has also duly invoked the arbitration clause. In view of the failure of the respondent to respond thereto, or took consent to the nominee proposed by the petitioner, the Arbitral Tribunal is required to be constituted in accordance with Section 11 of the Arbitration Act.

6. Therefore, this Court is inclined to appoint an arbitrator from Chennai. Accordingly, this petition is allowed by appointing Mr.L.Pachaiyappan, Advocate having office address – No.129, Karikalan Street, Adampakkam, Chennai – 600 088 (Mobile: 9840272732) as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law. It is open to the Sole Arbitrator to fix his fees and expenses in relation to the arbitral proceedings.

15.10.2024

Index : Yes/No
Speaking/Non Speaking
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G.K.ILANTHIRAIYAN, J.

rts

To

Mr.L.Pachiyyapan,
Advocate
No.129, Karikalan Street,
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Chennai – 600 088

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