



Arb.O.P.No.18 of 2024

C.V.KARTHIKEYAN, J.

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This Arbitration Original Petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, seeking to appoint an arbitrator consequent to the agreement entered into between the petitioner and the first respondent dated 18.04.2023.

2. The said agreement could be termed as an agreement of sale with the petitioner intending to purchase a commercial premises measuring about 1123 Sq.ft together with a land measuring about 1468 Sq.ft in S.No.278/1A1A(Part) and 280/1B(Part) forming part of a larger extent of land in Old S.Nos.278/1 and 280/1 at Padur Village in Thiruporur Taluk, Chengalpet District. Towards purchase of the said commercial premises, the parties had agreed for a sale consideration of Rs.1,90,00,000/-. It has been stated that the said agreement is an unregistered agreement. But, to the credit of both the petitioner and the first respondent, they both placed reliance on the said agreement and did not press the non-registration of the same as an issue before this Court. In the said agreement, the terms of execution of registration of the sale deed has also been given.

3. It had been stated that possession should be handed over on receipt of the entire sale consideration. It is also stated that the original title deeds were also to be handed over on receipt of the entire sale consideration. It had also been stated that either party to the agreement could seek enforcement of



the terms of the agreement for performance. More importantly, there is also a clause for arbitration.

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4. In view of the nature of the application now under consideration, it is only appropriate that the said clause is extracted in entirety. It is clause 16 of the agreement which is as follows:

"16. Any dispute arising between the parties hereto on account of breach in any of the terms of this agreement, may be referred to Sole Arbitrator, whose decision thereon shall be final and binding on both the parties. The Arbitration shall be conducted at Chennai as per the provisions of the Arbitration and Conciliation Act, 1996 and all matters arising under this agreement shall be subject to the exclusive jurisdiction of the Courts at Chennai only."

5. It is the contention of the learned counsel for the petitioner that the total sale consideration of Rs.1,90,00,000/- had been paid to the first respondent. That the said amount had been paid is also not disputed by the learned counsel for the first respondent. But the bone of contention between the two parties is that the first respondent had not completed the construction within the stipulated period and had not obtained completion certificate from the statutory authorities. One of the fundamental document required for possession is that the building which is constructed, has to be



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certified as being fit for occupation by the authorities. Till such certificate is given and the building is certified for occupation, it may not be possible for any one to occupy the building. In this case, the petitioner who had paid the entire sale consideration of Rs.1,90,00,000/- was not able to occupy the building on payment of entire sale consideration.

6. There has been correspondence exchanged between the parties. It is pointed out by the learned counsel for the petitioner that the first respondent had agreed to return back the entire amount and had actually returned back a sum of Rs.80,00,000/- and the remaining balance was also agreed to be returned back.

7. However, in the counter filed in the present application, it has been stated that the balance amount is retained towards damages and loss suffered by the first respondent. When these contradictory statements are put before this Court, naturally, the Court will have to conclude that a dispute has arisen between the petitioner and the first respondent.

8. The petitioner claims that the balance sale consideration should be returned back to the petitioner as a matter of right and owing to the commitment in the correspondence already exchanged between the petitioner and the first respondent. The first respondent is of the opinion that he is entitled to retain the said amount towards damages. Once a dispute is raised and emanates from the agreement entered into between two parties



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and such agreement has a clause to refer disputes to arbitration, it is only appropriate that the Court refers the dispute to arbitration. The present application has been filed seeking appointment of arbitrator to enter into reference as Arbitration Tribunal. The dispute between the parties emanates from the agreement of sale dated 18.04.2023. Let me not enter into any further discussion since there is a possibility to enter into the domain of the merits of the matter. That would be the privilege of the arbitrator.

9. In view of these circumstances, holding that there is a dispute that requires to be examined by an arbitrator, **Mr.P.Ganesan, former District Judge, residing at No.778, Judges Colony, Kakithapuram 4th Street, S.Kolathur, Kovilambakkam, Chennai 600 117, Mobile Number : 9600045571**, is appointed as Arbitrator to enter reference after following due procedure. The learned Arbitrator may endeavor to complete the arbitral proceedings within a period of four months from the date of initial hearing. The initial remuneration for the learned arbitrator is determined at Rs.1,00,000/- (Rupees One Lakh Only) to be paid in equal proportions by the petitioner and the first respondent. Later the learned arbitrator may determine the remuneration payable according to the rules and his reference as arbitrator.

15.07.2024

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Note : The Registry may mark a copy of this order to the learned Arbitrator.



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