



Arb.O.P (Com.Div.) No.197 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 08.08.2024	PRONOUNCED ON 03.09.2024
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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P (Com.Div.) No.197 of 2024

M/s.Samsthithi Edu Foundation,
Rep., by its authorised Signatory Mrs.Lima Rose
No.1521, Orange Building,
Trichy Road, Sungam, Coimbatore – 641 018.

...Petitioner

-VS-

1.Shree Lakshmi Hygreevar Research and
Educational Charitable Trust,
Rep., by Mrs.Malini Jayachandran
No.1, Eswaran Nagar Main Road,
Eswaran Nagar, 87 Veppampattu,
Thiruvallur Taluk & District – 602 024.

2.Mrs.Malini Jayachandran

3.Mr.G.Baskaran

...Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to decide all disputes under the Memorandum of Understanding dated 30.12.2019 and lease agreement dated 08.01.2020 respectively.



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For Petitioner : Mr. I Abrar Md., Abdullah

For Respondents : Mr. Adith Narayan Vijayaraghavan

ORDER

This Arbitration Original Petition had been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 seeking to appoint a sole Arbitrator for the dispute that had arisen between the parties arising from a Memorandum of Understanding (MoU) dated 30.12.2019 and the lease agreement dated 08.01.2020

2. Heard Mr.I.Abrar Md., Abdullah, learned counsel for the petitioner and Mr.Adith Narayan Vijayaraghavan, learned counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner would submit that the petitioner had entered into a MoU on 30.12.2019 with the first respondent. Pursuant to the said MoU, a registered Lease Agreement was also entered into between the parties on 08.01.2020. The object of the MoU was to establish a Maritime college for which a Lease Agreement



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had also been entered into. Pursuant to the said MoU, the petitioner had also approached the Directorate of General of Shipping to incorporate Maritime courses in the campus upon which statutory inspection had also been carried out by the authority on 12.08.2021 and 13.08.2021. He would submit that pursuant to certain objections pointed out by the authorities, the petitioner had approached the respondents. Since the objections raised by the authorities, were due to the action on the part of the respondents, the dispute had arisen between the parties. He would rely upon the clause F(2) of the MoU and contend that the disputes would have to be only arbitrated. He had also relied upon clause 8 of the lease agreement indicated that the lease agreement had been entered to fulfil the rights and obligations of the parties under the MoU. Hence, he would seek this Court to appoint an Arbitrator to resolve the dispute between the parties for the reason that the respondents had not complied with the obligations under the MoU.

4.Countering his arguments, the learned counsel appearing for the respondents would contend that there is no clause under the lease agreement which requires to be referred to Arbitration. He would further



contend that the MoU is only between the petitioner and the first respondent and the Arbitration clause contained therein cannot be extended to the second and third respondents in their personal capacity. He would further submit that the MoU was substituted by the lease agreement dated 08.01.2020 and therefore, the arbitration clause contained in the MoU perishes with the execution of the lease agreement. Once the MoU has perished, the arbitration clause embedded in the MoU also gets perished. In view of the novation of the MoU into the lease agreement, which do not contain, the arbitration clause between the parties, the same could not be referred to arbitration and it is for the petitioner to approach the appropriate forum to seek redressal of this grievance. In that context, to drive home his contentions, he had relied upon the following judgments of the Hon'ble Apex Court:-

- 1) ***Damodar Valley Corporation vs. K.K.Kar*** reported in ***(1974) 1 SCC 141***;
- 2) ***M.R.Engineers & Contractors Pvt., Ltd., vs. Som Datt Builders Ltd.***, reported in ***(2009) 7 SCC 696***; and
- 3) ***NBCC (India) Ltd vs. Zillion Infra projects Pvt., Ltd*** reported in ***2024 SCC Online SC 323***



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5.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

6.A MoU had been admittedly entered into between the parties on 30.12.2019. The said MoU had been entered into between the petitioner and the first respondent for establishing and developing the Maritime College under the brand name of “Su-Nav Maritime Academy”. The said MoU also delineates the rights and obligations of the respective parties. Thereafter, a lease agreement had also been entered into between the petitioner and the first respondent. The second respondent is the Chairman and Managing Trustee of the first respondent Trust. The second respondent herein is also a witness to the said lease agreement wherein in clause 7, the second respondent had no objection for sub-lease of the property. Further the second respondent is also one of the witness of the MoU upon which the lease agreement had been entered upon. The lease deed also indicates that the lessor and lessee namely the petitioner and the first respondent had signed an MoU and that the rights and obligations had been defined in the said MoU in respect of the scheduled



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property of the lease deed. The lease deed does not in any other manner referred to the MoU. The lease deed also does not envisage that the same is superseding the MoU. The MoU for establishing a college for which purposes, the Lease Agreements seems to have been entered upon between the parties. Hence, the contention of the respondents particularly the second and third respondents that they were not parties to the MoU and that they are not necessary parties to the said Arbitration proceedings, in my view cannot hold good.

7.Further, the argument of the learned counsel appearing for the respondents that the MoU which is a preliminary document had been substituted by a lease agreement cannot also be countenanced for the reason that the MoU was for the starting of a Maritime Academy for which the lease agreement had also been entered upon. The lease agreement dated 08.01.2020 is only supplementing the MoU and it does not supplant the MoU. In that context, the judgments relied upon by the learned counsel appearing for the respondents cannot be made applicable to the facts of the case as neither the MoU had been superseded nor had it perished in view of the execution of the lease agreement.



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8. In such an event, I am inclined to appoint an Arbitrator who would be a retired Judge of this Court for arbitrating the dispute between the parties. In such circumstances, this Court appoints ***Hon'ble Dr. Justice P. Devadass***, Former Judge Madras High Court, residing at No.23, Garden Street, VGN Monte Carlo, Gurusamy Road, Nolambur, Chennai, Cell No.9444487799, as a sole Arbitrator to enter upon the dispute between the petitioner and the respondents.

9. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible.

10. In fine, the Arbitration Original Petition is ordered accordingly.

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Index : Yes/No

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Pre-Delivery Order in
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