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O.A.No.336 of 2024

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KRISHNAN RAMASAMY, J.,

This application has been filed to grant an order of interim injunction restraining the respondent from representing themselves to be the Promoters of the Project or dealing with/encumbering any part of the property, pending disposal of the arbitration proceedings.

2. When this matter was taken up for hearing, both the learned counsel would submit that though they filed the present application under Section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter called as “the Act”) for interim injunction, now the parties are intend to go for Arbitration to adjudicate the disputes between them.

3. Further, they would submit that the parties had entered into Joint Development Agreement dated 26.09.2014 (JDA) and the present dispute between the parties, which is arising out of the JDA, is arbitrable as per the



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terms of Arbitrary Clause of the said JDA. Hence, they request this Court to appoint an Arbitrator to adjudicate the dispute between the parties.

4. Heard the learned counsel for the applicant and the respondent and also perused the materials available on record.

5. In the present case, it is clear that the dispute between the parties is arising out of the JDA dated 26.09.2014. Upon perusal of the said JDA, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Arbitrary Clause of the said JDA, which reads as follows:

“ARBITRARY CLAUSE

It is hereby agreed by the parties herein that all disputes and differences arising out of in relation to these presents or touching the development, construction of new buildings and in relation thereto shall be referred to the arbitrator then mutually engaged and the Arbitration and Conciliation Act will be applicable.”



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6. Considering the submissions made by both the learned counsel and also in view of the fact that the dispute between the applicant and the respondent squarely falls within the purview of Arbitrary Clause of the JDA dated 26.09.2014, though the present original application was filed under Section 9, considering the request made by the learned counsel for the respective parties and since this Court is also dealing with the Section 11 jurisdiction, this Court is inclined to appoint an Arbitrator to adjudicate the disputes between the parties.

7. Accordingly, this Court feels it appropriate to pass the following order:

i) **The Hon'ble Mr.Justice Sanjay V.Gangapurwala, Former Chief Justice, Madras High Court, residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001, Phone No.95451 11995,** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an



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award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the applicant shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent and vice versa.

iv) The interim order already granted by this Court on 30.04.2024 is extended till the date of first hearing before the Arbitral Tribunal.

v) Thereafter, the learned Arbitrator shall consider the present application as Section 17 application and accordingly, the respective parties may make submission for further continuation of the interim injunction granted by this Court, etc.

vi) The parties are granted liberty to raise all their contentions before the learned Arbitrator.



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vii) If any notice was already issued, the date of commencement of Arbitral proceedings would be the date of issuance of the said notice.

viii) If no notice was issued, since this Court has appointed Arbitrator in Section 9 proceedings, by invoking jurisdiction under Section 11, the commencement of Arbitral proceedings would be the date of passing of the present order.

8. With the above directions, this application is disposed of. No cost.

24.06.2024

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