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O.S.A.(CAD).No.113 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.(CAD).No.113 of 2022

and

C.M.P.No.11925 of 2022

M/s.Colorhome Developers Pvt. Ltd.,
Rep. by its Managing Director D.Ramesh,
No.37, 6th Street, A Block,
Anna Nagar (East), Chennai – 600 102.

... Appellant

Vs.

M/s.Color Castle Owners Society
Rep. by its Secretary Murugesan
Nookampalayam, Kamrajar Street,
Perumbakkam, Chennai – 600 100.

... Respondent

Prayer: Original Side Appeal (Commercial Appellate Division) filed under Order XXXVI Rule 1 of the original Side Rules read with Section 13(1)(a) of the Commercial Courts Act, against the order passed in Arb.O.P.(Com.Div.) No.157 of 2022 dated 05.04.2022.



For Appellant : Mr.ARL.Sundaresan, Senior Advocate
for Mr.AR.Karthik Lakshmanan

For Respondent : Ms.Shoba Srikanth

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge in this appeal is to the order passed by the learned Single Judge in Arbitration O.P.(Commercial Division) No.157 of 2022 dated 05.04.2022 dismissing the application under Section 34 of the Arbitration and Conciliation Act.

2. The respondent viz., the Association of home buyers raised a dispute and sought for appointment of Arbitrator in O.P.No.554 of 2019 which came to be allowed by this Court on 17.09.2019 appointing a sole Arbitrator to decide the dispute between the parties. The operative portion of the order observes that there was no dispute regarding the existence of an arbitration agreement and the only contention is that it is not open to the petitioner Society to invoke the Arbitration clause after the expiry of the maintenance obligation cast upon the appellant was negated by the Court



and an Arbitrator was appointed.

3. The Arbitrator passed an award for payment of certain monies to the Association. This award was subject matter of challenge in the petition under Section 34 before the learned Single Judge. From a reading of the order of the learned Single Judge we could gather that the only objection that was urged before the learned Single Judge exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 was that the Secretary of the Association could not have filed an application and therefore the appointment of Arbitrator itself is flawed.

4. The learned Single Judge rightly rejected the same after observing that the order passed under Section 11 has taken note of the objections and has held that the appointment of Arbitrator is valid and has appointed Arbitrator after over-ruling the said objection. Therefore, it is not open to the appellant to raise the issue once over again before us in the appeal.

5. Mr.ARL.Sundaresan, learned Senior counsel appearing for the appellant would contend that the very invocation of arbitration by the



respondent Association is invalid since there was no agreement between the association and the appellant/builder and therefore the entire proceedings before the Arbitrator are vitiated.

6. It should be noted that this objection was not raised at any stage of the proceedings before the Arbitrator or before the learned Single Judge who heard the petition under Section 34. Section 16(2) of the Arbitration and Conciliation Act requires a plea regarding jurisdiction of the Arbitral Tribunal should be raised not later than the submission of the statement of defence; it also provides that a party shall not be precluded from raising such a plea because he has appointed or participated in the appointment of an Arbitrator.

7. The necessary implication is that a plea relating to jurisdiction of the Arbitrator or invalidating the appointment of the Arbitrator must have been raised before him before submitting the first statement of defence on the merits of the claim. If such a plea had not been raised at the appropriate time, it cannot be allowed to be raised at the subsequent stages of litigation. In view of the same, we do not think we can entertain the plea that has now



been raised by the appellant.

8. Mr.ARL.Sundaresan, learned Senior Counsel appearing for the appellant would submit that the learned Single Judge ought to have considered the other plea regarding maintainability of the Original Petition at the instance of the Association.

9. We find that the learned Single Judge has considered the objections and has rejected it. Considering the limited scope of jurisdiction under Section 34 and the appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996, we do not think we can delve into that question at the appellate stage.

10. Hence, the appeal fails and it is accordingly **dismissed**. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
25.03.2024

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Index : No
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Speaking order

WEB COPY

O.S.A.(CAD).No.113 of 2





WEB COPY

O.S.A.(CAD).No.113 of 2



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