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O.S.A. (CAD) No.105 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A. (CAD) No.105 of 2024
and
C.M.P. No.20022 of 2024
in O.S.A. (CAD) No.105 of 2024

M/s.Karismaa Foundations Private Limited
having its Office at
No.340, 1st South Main Road,
Kapaleeswar Nagar, Neelankarai,
Chennai – 600 115.

.. Appellant

Vs

1.Amrithaa
2.Deepa Mohan Kumar
3.R.Sathyam

.. Respondents

Appeal filed under Section 37 of The Arbitration and Conciliation Act, 1996 r/w Section 13(1) of The Commercial Courts Act, 2015 against the judgment and decree dated 21.03.2024 made in Arb.O.P. (Comm.Div.) No.477 of 2023.

For Appellant : Mr.Nithyaesh Natraj
and Mr.Vaibhav R.Venkatesh

For Respondents : Mr.Gautam S.Raman for R1 & R2
Mr.Shravan R
for Ravi Law Chambers for R3



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by **M.Sundar, J.**)

Captioned 'Original Side Appeal' (hereinafter 'OSA' for the sake of brevity) is a intra-court appeal. Captioned OSA i.e., 'O.S.A. (CAD) No.105 of 2024' has been presented in this 'Commercial Appellate Division' (hereinafter 'CAD' for the sake of brevity) on 24.06.2024 assailing an order dated 21.03.2024 made in Arb.O.P. (Com.Div.) No.477 of 2023 and A.N.5767 of 2023 thereat by the Commercial Division of this Court. This '21.03.2024 order' shall be referred to as 'impugned order' and the 'Commercial Division which made the impugned order' shall be referred to as 'Section 34 Court' both for the sake of convenience and clarity. To be noted, Arb.O.P. (Comm.Div.) is a petition under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, convenience and clarity) and therefore 'Section 34 Court' the Court which made the order is being referred to as 'Section 34 Court'.

2. Short facts shorn of particulars not imperative for appreciating this order are that the appellant company is a builder/developer, R1 and R2 before us are owners of a piece of land in the city of Chennai and R3 is purchaser of an undivided



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share in the land owned by R1 and R2 (to be noted, R3 has purchased on the strength of a power of attorney executed by R1 and R2 in favour of appellant/builder company); that the issue is anchored on a 'Joint Venture Agreement dated 15.03.2015' (hereinafter 'said JV Agreement' for the sake of convenience and clarity); that said JV Agreement was between predecessor in title/mother of R1 and R2 and appellant/builder company, subsequently R1 and R2 stepped into the shoes of their mother on her demise; that the said JV Agreement is for development of a property at Old No.3/New No.2, Hanumanthan Street, T.Nagar, Chennai – 600 017 made up of land area of two grounds and 80 sq.ft. or thereabouts and built up area of about 3000 sq.ft. standing on the same; that the said JV Agreement was for bringing down the existing superstructure and to put up a new construction; that ownership of new construction together with the land was to be shared in a given ratio as between the owners and the builder; that pursuant to this 'General Power of Attorney' (hereinafter 'GPA' for the sake of convenience and clarity) executed by owners in favour of developer/builder, one undivided share has been sold on the strength of this GPA by builder to R3; that the said JV Agreement ran into rough weather owing to which, arbitration clause under said JV agreement was triggered and 'Arbitral Tribunal' (hereinafter 'AT'



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for the sake of brevity) was constituted; that before AT, the appellant/builder was the claimant, owners were R1 and R2 and the alienee of undivided share/R3 joined later; that AT made an award dated 22.03.2023; that this award of AT was assailed by the owners before Section 34 Court; that Section 34 Court in and by the impugned order allowed the Section 34 petition and set aside the award leaving it open for the parties to work out their remedies as per Clause 29.2 of the said JV Agreement; that aggrieved by the impugned order, the builder/developer is on appeal before us vide captioned OSA, which is under Section 37 of A and C Act.

3. Mr.Nithyaesh Natraj along with Mr.Vaibhav R.Venkatesh, learned counsel who is before us submitted that the kernel of the issue is unilateral appointment of arbitrator. Though there are some other issues, the point that **Central Organisation for Railway Electrification Vs. ECL-SPIC-SMO-MCML** reported in **(2020) 14 SCC 712** is under reference and that reference verdict is awaited was also highlighted.

4. Issue notice.

5. Mr.Gautam S.Raman, learned counsel accepted notice for R1 and R2 and Mr.Shravan R of Ravi Law Chambers accepted notice



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for R3.

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6. As already alluded to supra, the crux and gravamen of the issue is unilateral appointment of arbitrator and therefore the parties arrived at a consensus and agreed to go for re-arbitration by another arbitrator.

7. In the light of the narrative thus far, captioned OSA and the captioned 'Civil Miscellaneous Petition' (hereinafter 'CMP' for the sake of brevity) thereat will now be disposed of by consent order but before we write the order we make it clear that this order will not in any manner be construed as reflection on the choice of Hon'ble Arbitrator who rendered 22.03.2023 award.

8. The following consent order is made:

8.1 The impugned order dated 21.03.2024 as well as the award dated 22.03.2023 are set aside;

8.2 The impugned order dated 21.03.2024 and award dated 22.03.2023 are set aside solely for the purpose of facilitating re-arbitration and it is made clear that in instant order, there is no expression of view or



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opinion on the merits of the matter;

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8.3 Re-arbitration shall now be by Hon'ble Mr. Justice Paul Vasantha Kumar, Retired Chief Justice of Jammu & Kashmir High Court residing at 'ASHIRVADH', No.24A, II Street, Kamaraj Avenue, Adyar, Chennai - 600 020 (Ph: 24452817, 24454381);

8.4 Though it cannot be strictly construed as fast track arbitration under Section 29B of A and C Act as evidence already recorded would also be taken into account, the parties agreed to re-arbitration by Hon'ble Arbitrator to be completed within three months from 01.10.2024 on the basis of existing pleadings, oral evidence and exhibits without resorting to further pleadings, oral evidence or exhibits;

8.5 To be noted, all the three counsel have expressed consent on the basis of instructions from their respective clients i.e., instructions for constitution of AT in the manner alluded to supra;



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8.6 We are informed that the consent and concurrence of Hon'ble Mr. Justice Paul Vasanthakumar, Retired Chief Justice of Jammu & Kashmir High Court has been obtained to act as a sole arbitrator. Hon'ble Mr. Justice Paul Vasanthakumar, Retired Chief Justice of Jammu & Kashmir High Court is requested to enter upon reference, adjudicate qua arbitrable disputes between the parties and render an award as expeditiously as possible preferably within three months from 01.10.2024;

8.7 Any observation made in the instant order shall not come in the way of the arbitration proceedings in the re-arbitration though this is a judicial order. To put it differently, the observations in this order will neither be an impediment nor serve as an impetus in the arbitral proceedings that is to ensue;

8.8 Hon'ble Arbitrator is requested to conduct arbitration in accordance with Madras High Court



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Arbitration Proceedings Rules 2017 and fee of Hon'ble Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017;

8.9 It is open to the parties to move the Hon'ble Arbitrator under Section 17 of A and C Act, if so advised and if so desired. If Section 17 application is filed before the Hon'ble Arbitrator, then Hon'ble Arbitrator shall consider the same on its own merits and in accordance with law;

8.10 To be noted, two section 9 applications in O.A.Nos.239 and 240 of 2024 are pending and all the counsel before us agreed to give quietus to the same before 01.10.2024;

8.11 Though this is re-arbitration, we make it clear that Hon'ble Arbitrator will not be precluded from resorting to Section 30 of A and C Act.

9. It is made clear that this order shall not be construed as any expression of any view or opinion on the earlier Hon'ble



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Arbitrator who rendered impugned award. It is further made abundantly clear that this course is being adopted only for the purpose of giving expeditious quietus to the matter and therefore, this order shall not be construed as any expression or any opinion qua Hon'ble Arbitrator who made earlier award i.e., impugned award.

10. Captioned OSA and captioned CMP thereat are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
26.09.2024

Index:Yes/No

Neutral Citation: Yes/No

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Note: Registry is directed to communicate this order to Hon'ble Mr.Justice Paul Vasanthakumar, Retired Chief Justice of Jammu & Kashmir High Court at "ASHIRVADH" No.24A, II Street, Kamaraj Avenue, Adyar, Chennai - 600 020 (Ph: 24452817, 24454381) forthwith.

To

The Sub Assistant Registrar,
Original Side, High Court,
Madras.



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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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