



WEB COPY



O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023

and

Arb.O.P.(Com.Div) 438 of 2024

O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023

and

Arb.O.P.(Com.Div) 438 of 2024

C.V.KARTHIKEYAN, J.

Arb.O.P.(Com.Div) 438 of 2024 had been filed taking advantage of the Section 11 (4) of the Arbitration and Conciliation Act 1996, seeking appointment of an Arbitrator.

2.The applicants had issued a notice under Section 21 of the Act seeking to invoke the arbitration proceedings relating to the disputes between the applicants and the respondents. The first respondent is a partnership firm and the second and third respondents are the partners of the partnership firm.

3.It is contended by the learned counsel for the applicants that loan was advanced to the partnership firm and loan had been received by the partnership firm, but not repaid. While advancing loan, the parties had entered into an agreement and such agreement had a specific clause relating to settlement of disputes through arbitration. The clause relating to such settlement of disputes through arbitration is as follows:



O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023

and

Arb.O.P.(Com.Div) 438 of 2024

“Dispute Resolution and Jurisdiction

(i) Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the [Indian] Arbitration and Conciliation Act, 1996.

(ii) The arbitral tribunal shall be composed of Sole Arbitrator or by the Arbitrator appointed by mutual consent.

(iii) The place of arbitration shall be at Chennai and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties concerned. ”

4.Independent of this particular application, the applicants had also filed O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023. In O.A.No.1122 of 2023, the relief sought was to grant interim injunction restraining the respondents from alienating or encumbering the properties morefully set out in the judges summons. The learned Single Judge of this Court while examining the merits had granted an interim injunction, by an order dated 02.01.2024. The injunction had been continued and is still in force. With respect to



O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023

and

Arb.O.P.(Com.Div) 438 of 2024

Arb.Appln.No.673 of 2023, the relief sought was to furnish security to the extent of the amount due and payable by the respondents. No orders have been passed in that particular application.

5.Now, before this Court, there are three separate applications, (i) under Section 11 (4) of the Arbitration and Conciliation Act 1996 seeking appointment of an Arbitrator, (ii) for an injunction not to alienate the property, in which, an injunction had been granted and is still in force and (iii) an application seeking furnishing of security, in which, no order has been passed.

6.Taking into consideration the overall issue, it will be appropriate since the parties had agreed to refer the disputes which had arisen to be adjudicated through an Arbitrator and the clause provides for an appointment of an Arbitrator, Hon'ble Mr.Justice M.Govindaraj, former Judge of this Court is appointed as the Arbitrator. The learned Arbitrator may determine the fees in accordance with the schedule of the Arbitration and Conciliation Act, 1996. The interim order already granted in O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023 to continue and both the parties are directed to raise arguments



O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023

and

Arb.O.P.(Com.Div) 438 of 2024

before the learned Arbitrator. I am confident that the learned Arbitrator would apply mind independently and not on the basis of the reasons given by the learned Single Judge of this Court during examination on merits the said interim order. The application seeking the furnishing of security may also be adjudicated by the learned Arbitrator. The learned Arbitrator may endeavour to dispose of the issues between the parties within a period of nine months from the date of receipt of a copy of this order.

7.All these three applications stand disposed of.

05.11.2024

sli



WEB COPY



O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023
and
Arb.O.P.(Com.Div) 438 of 2024

C.V.KARTHIKEYAN,J.

sli

O.A.No.1122 of 2023 and Arb.Appln. 673 of 2023
and
Arb.O.P.(Com.Div) 438 of 2024

05.11.2024