



WEB COPY

Arb.O.P(Com.Div.) No.318 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P(Com.Div.) No.318 of 2024

1.Rukmani Duraisamy
2.Ranjithkumar
3.Ranjini

... Petitioners

*[Petitioners 2 & 3 impleaded as
per order dated 13.12.2024 in
A.No.6521 of 2024]*

VS.

M/s.SEPC Limited,
Bascon Futura SV-4th Floor,
10/1, Venkatanarayana Road,
T Nagar, Chennai – 600 017.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to decide the dispute between the petitioner and the respondent pursuant to the claim made by the petitioner in the letter dated 13.05.2024 arising under the Arbitration Agreement dated 23.09.2021.

For Petitioners : Mr.R.Prabakar



For Respondent : Mr.Shivakumar & Suresh

WEB COPY

ORDER

This Original Petition has been filed seeking appointment of a Sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, to enter into the disputes between the petitioners and the respondent in pursuance of the arbitration agreement dated 23.09.2021.

2.I have heard R.Prabakar, learned counsel appearing for the petitioners and Mr.Shivakumar and Suresh, learned counsel appearing for the respondent.

3.The learned counsel for the petitioners would invite my attention to the letter dated 13.05.2024 in and by which the petitioner has invoked the arbitration clause under the agreement dated 23.09.2021. According to the petitioner, despite the said letter, the respondent has not come forward to even respond to the said letter and hence, with no other option, the present Original Petition has been filed. The learned counsel for the petitioners would further submit that under the agreement, the right to appoint a Sole Arbitrator was vested with the respondent and he would therefore contend



that in view of the dictum of the Hon'ble Supreme Court in *Perkins Eastman Architects Dpc Vs. HSCC (India) Limited* reported in (2019) SCC Online SC 1517, the respondent has no right to make unilateral appointment and in such circumstances, he would pray for a Sole Arbitrator being appointed as prayed for.

4.Per contra, Mr.Shivakumar, learned counsel appearing for the respondent would submit that the petitioners have not invoked the arbitration clause and he would refer to the letter dated 13.05.2024 and referring to the same, he would state that the petitioners have only concluded the said notice stating that if the payment as due is not made to the petitioners, then the petitioners would be constrained to invoke the arbitration clause in the agreement and initiate appropriate legal proceedings. He would therefore submit that there has been no proper invocation as contemplated under the Arbitration and Conciliation Act, 1966.

5.That apart, he would also refer to various averments and objections



WEB COPY



set out in the counter affidavit which according to me pertain to the merits of the claim. Insofar as appointment of an Arbitrator under Section 11, the Court concerned is to only look into the existence of the a valid arbitration agreement between the parties and as rightly contended by the learned counsel for the petitioners, since the dispute has arisen, he has issued a notice on 13.05.2024. It is true that the said notice is not happily worded. A demand alone is made for the amounts due and payable to the petitioner and it is stated that failing such payment, the petitioners would invoke the arbitration clause and initiate appropriate legal proceedings.

6. Admittedly, the said notice was received by the respondent and he has not chosen to send any reply to the said notice. Thereafter, the present Original Petition has been filed for appointment of an Arbitrator contending that the arbitration clause has been invoked by letter dated 13.05.2024 which has been received by the respondent on 14.05.2024 and that the respondent has not come forward to even reply to the same. The objection taken by the respondent that the petitioners have not invoked the arbitration clause and the notice dated 13.05.2024 will not amount to invocation of arbitration clause, is in my considered opinion a mere hyper technical



objection.

WEB COPY

7. Admittedly, there is a dispute between the parties and the respondent also does not dispute the factum of the notice dated 13.05.2024 which has been construed by the petitioners though erroneously as invocation of the arbitration clause, as can be seen from the averments in the present petition in paragraph No.9. Driving the petitioners to issue another notice nominating an Arbitrator and forcing second a round of litigation would only multiply the proceedings which can be avoided since the respondent admits to the existence of the arbitration agreement. By filing this Original Petition after issuing the notice dated 13.05.2024, the petitioners have also made their intentions clear and have understood the notice only as a Section 21 notice.

8. Further, in view of the dictum of the Hon'ble Supreme Court *Perkins Eastman Architects Dpc Vs. HSCC (India) Limited* reported in (2019) SCC Online SC 1517, an appointment of Arbitrator cannot be made unilaterally by the respondent even though such an arbitration clause has been included in the agreement. Hence, I am of the view that this petition



has to be necessarily allowed.

WEB COPY

9.In view of the above, I hereby appoint **Mr.S.Baskaran, Judge (Retd) High Court, B004, Kesav Dugar Apartment, Kesavaperumalpuram, East Avenue, R.A.Puram, Chennai – 600 028**, as sole Arbitrator to go into the disputes between the parties and attempt to amicably resolve the same.

10.The learned Arbitrator is entitled to fix his fees in terms of the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than nine (9) months from the date of his entering into reference.

11. Accordingly, this Arbitration Original Petition is allowed.

22.01.2025

ata

Index : Yes / No

Internet : Yes / No

P.B.BALAJI, J.,



WEB COPY



Arb.O.P(Com.Div.) No.318 of 2

ata

Arb.O.P(Com.Div.) No.318 of 2024

22.01.2025