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Arb.O.P.(Com. Div.) No.414 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.414 of 2024

1.B. Maruthi

2. M. Nirmala

... Petitioners

Vs.

M/s.Kaaviya Constructions and Developers Pvt. Ltd.,

(CIN: U45200TN2010PTC078612),

A Private Limited Company incorporated under

the Companies Act, 1956,

Represented by its Director,

Mr.E.Thirunavakarasu,

Having its Registered Office at

Old No.81/3, New No.217/8,

Flat No.S2, Agasthiar Block,

MGR Salai, Nehru Nagar,

Saligramam, Chennai, Tamil Nadu - 600 093.

... Respondent

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute between the petitioners and the respondent under the Joint Development Agreement dated 29.06.2017 and to direct the respondent to pay the cost.

For Petitioners : Mr. S. Karthikeyan
for Mr. Rajesh Ramanathan

For Respondent : Mr.Arun Anbumani
for M/s.Arul Selvam Asso.



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ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an arbitrator by this Court.

2. There seems to be a dispute arising out of a Joint Development Agreement dated 29.06.2017 entered into between the petitioners and the respondent. There exists an arbitration clause in the Joint Development Agreement dated 29.06.2017 and the same is extracted hereunder:

"35) a) If any dispute, difference or claim arises between the parties hereto in connection with this agreement or the interpretation, implementation, or alleged breach of this agreement or anything done or omitted to be done pursuant to this agreement, then either party may refer to the dispute for resolution by three arbitrators one to be appointed by each party. And the two arbitrators shall appoint a third arbitrator. Such arbitrator shall be conducted in accordance with the provisions of the Arbitrator and



Conciliation Act, 1996 or any statutory modification or re-enactment for the time being in force. All proceedings in any such arbitration shall be conducted in English.

b) The site of the Arbitration shall be at Chennai and the proceedings shall be conducted in the English language.

c) The courts in Chennai alone will have exclusive jurisdiction over all matter arising out of and under this JDA."

3. The petitioners have also invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent as per Section 21 of the Arbitration and Conciliation Act on 30.07.2024. A reply dated 21.08.2024 has also been received by the petitioners to the said notice, stating that there is no arbitral dispute between the parties. Since there is no consensus for arbitration, the petitioners have filed this petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an arbitrator by this Court.



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4. A counter has been filed by the respondent, questioning the mandate of this petition by raising the following grounds:

a) Since the petitioners have cancelled the power of attorney given pursuant to the Joint Development Agreement dated 29.06.2017, which contains an arbitration clause and the petitioners having sold the properties, which are the subject matter of the Joint Development Agreement dated 29.06.2017, there is no arbitral dispute between the parties and therefore, the question of appointment of an arbitrator by this Court does not arise;

b) The Joint Development Agreement dated 29.06.2017, which contains an arbitration clause has been abandoned by the petitioners since the petitioners have themselves cancelled the power of attorney and issued fresh power of attorney and pursuant to the same, properties have already been sold.

5. Learned counsel for the petitioners drew the attention of this Court to the arbitration clause contained in the Joint Development Agreement dated 29.06.2017 as well as the notice issued by the petitioners to the respondent, invoking arbitration as per the said clause under Section 21 of



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the Arbitration and Conciliation Act and would submit that since there exists an arbitration clause, this Court will have to appoint an arbitrator since there has been no consensus for arbitration. He would also deny the contentions of the respondent as raised through their counter filed before this Court. He would submit that certain sums of money are due and payable by the respondent to the petitioners in view of the breach of contract committed by them by not adhering to the terms and conditions of the Joint Development Agreement dated 29.06.2017.

6. However, the learned counsel for the respondent would reiterate the contents of the counter filed before this Court and would submit that since there is no arbitral dispute between the parties due to the reason that the Joint Development Agreement dated 29.06.2017 is now abandoned, the question of appointment of an arbitrator by this Court does not arise.

7. This Court while deciding an application under Section 11 of the Arbitration and Conciliation Act, will have to only look into whether on a *prima facie* consideration there exists an arbitration clause or not in the subject matter of the dispute. Admittedly, the Joint Development Agreement



dated 29.06.2017, which is the subject matter of the dispute as raised by the petitioners before this Court entered into between the petitioners and the respondent, contains an arbitration clause as extracted supra though the respondent may contend that the Joint Development Agreement dated 29.06.2017 has now been abandoned on account of the subsequent conduct of the petitioners in cancelling the power of attorney and executing a fresh power of attorney and also selling the properties. The said contentions cannot be decided in an application under Section 11 of the Arbitration and Conciliation Act.

8. This Court will have to be only *prima facie* satisfied with regard to the existence of an arbitration clause. Since on a *prima facie* consideration, there exists an arbitration clause in the Joint Development Agreement dated 29.06.2017, this Court will have to necessarily appoint an arbitrator since there is no consensus between the parties with regard to the arbitration, despite the fact that the petitioners had invoked arbitration by issuing notice to the respondent under Section 21 of the Arbitration and Conciliation Act.

9. The law is now well settled that while deciding an application



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under Section 11 of the Arbitration and Conciliation Act, this Court need not make a roving enquiry with regard to the disputes raised by the respondent with regard to the arbitration that too when on a *prima facie* consideration, this Court finds that there exists an arbitration clause in the Joint Development Agreement dated 29.06.2017, which is the subject matter of dispute between the parties.

10. Since there exists an arbitration clause in the subject matter of the dispute between the parties as raised by the petitioners and since there is no consensus between the parties with regard to the arbitration, this Court will have to necessarily appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act. If at all the respondent is having any grievance with regard to the arbitration, they can very well raise the same before the arbitrator to be appointed by this Court under Section 16 of the Arbitration and Conciliation Act.

11. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:



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ABDUL QUDDHOSE. J.,

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(a) The Hon'ble Mr.Justice T.Ravindran, Former Judge, Madras High Court, who is having address at New No.27, Old No.12, 3rd Avenue, Indira Nagar, Adyar, Chennai - 600 020 (Mobile No.99413 50926 / 94443 99700) is appointed as the sole Arbitrator to decide the dispute between the petitioners and the respondent arising out of the Joint Development Agreement dated 29.06.2017;

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;

(c) Both the parties shall equally share the arbitrator's fees;

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index : Yes/No

Speaking Order : Yes / No

Neutral Citation Case: Yes / No

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