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Arb.O.P (Com.Div.) No.501 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.501 of 2024

M/s.Maxcity Builders & Promoters,
represented by its Proprietor
Mr.V.Swaminathan

... Petitioner

Versus

V.Rajesh

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of clause 11 of Registered Construction Agreement dated 06.11.2019 in Document No.9158 of 2019 and to direct the respondent to pay costs.

For Petitioner : Ms.Pavithashini

For Respondent : Mr.T.Raghavan



ORDER

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

2.The petitioner and the respondent had entered into the following agreements:

- a)Promoters Agreement dated 16.09.2019 and
- b)Construction Agreement dated 06.11.2019.

3.There seems to be a dispute arising out of both the agreements. The petitioner claims that the respondent has to pay balance sale consideration under the aforementioned agreements. As seen from the counter filed by the respondent before this Court, he says that he has paid the entire dues of the petitioner. The Construction Agreement dated 06.11.2019, which is the subject matter of the dispute, contains an arbitration clause. The same is extracted hereunder:

'11.Any disputes or differences arising under this agreement with regard to interpretation and meaning of any of the terms



and condition for enforcing a payment of claim arising into this agreement shall be referred to an arbitrator who shall be appointed by mutual consent.'

4. According to the petitioner, the Construction Agreement dated 06.11.2019 has to be read in conjunction with the Promoters Agreement dated 16.09.2019.

5. The respondent does not dispute the existence of the arbitration clause in the contract, which is the subject matter of the dispute. The only contention he has raised is that since the respondent has settled the dues of the petitioner, there is no arbitrable dispute between the parties. Whether he owes money to the petitioner or not cannot be decided by this Court while deciding this petition filed under Section 11 of the Arbitration and Conciliation Act that too when the petitioner has disputed the contention of the respondent.

6. Admittedly, when there exists an arbitration clause in the contract, which is the subject matter of the dispute as referred to supra, necessarily,



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this Court will have to appoint an Arbitrator since there has been no consensus between the parties for naming the Arbitrator. The petitioner has also complied with the statutory requirement by issuing a notice on 17.08.2024 to the respondent calling upon the respondent to agree for arbitration. The respondent has also sent a reply to the petitioner on 02.09.2024 stating the very same reasons that have been given in the counter filed before this Court under Section 11 of the Arbitration and Conciliation Act.

7.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Mrs.Chitra Narayan, Advocate, having office at 3E, Kgeyes Eternity, Parvathy Street, Kalakshetra Colony, Besant Nagar, Chennai - 600 090, Mobile No.9094031934 as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the Construction Agreement dated 06.11.2019 and Promoters Agreement dated 16.09.2019, on merits and in accordance with law.



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(b)The Arbitrator shall be paid her remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.

(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. No costs.

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ABDUL QUDDHOSE, J.

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