

C. Jayaraj Vs. M/S. Innovative Property Management and Co. and Others

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Court : Karnataka

Decided On : Feb-12-2014

Judge : Ram Mohan Reddy

Appeal No. : C.M.P. No. 178 of 2010

Appellant : C. Jayaraj

Respondent : M/S. Innovative Property Management and Co. and Others

Judgement :

(Prayer: This Petition Is Filed Under Section 11[5] Of The Arbitration And Conciliation Act, 1996 Praying To Appoint Justice Pathri Basavana Gouda, Former Judge Of High Court Of Karnataka As Sole Arbitrator To Adjudicate Upon The Contra Claims Between The Respondents And Petitioner In The Above Case; Etc.)

1. This petition under section 11 of the Arbitration and Conciliation Act, 1996 [for short 'Act'], is instituted by a party to the Property Management and Services Agreements - Annexures-A, B and C of even date dated 25.8.2008. 1st respondent and 3rd respondent are signatories to the said agreement, while the 2nd respondent is the Signatory to the Memorandum of understanding dated 5.11.2008 - Annexure-D, as between the 1st and 2nd respondent.

2. Petitioner submits that certain disputes having arisen in terms of the agreements - Annexures - A, B and C, led to legal notices and since there was no

resolution of the disputes, notice dated 24.8.2010 Annexure-H, was issued nominating Sri. Justice G. Patri Basavana Goud, former Judge of the High Court of Karnataka, as an Arbitrator in terms of clause - 35 in each of the agreements, where under parties had agreed for the appointment of an Arbitrator and third neutral Arbitrator to resolve the disputes between the parties in accordance with the Indian law on Arbitration.

3. The order sheet discloses orders over whether the agreements Annexures-A, B and C, are duly stamped as required under the Karnataka Stamp Act, 1957.

4. Having heard learned counsel for the parties, perused the pleadings and regard being had to section 16[1][a] of the Act and the decision of the Apex Court in 'M/s. SMS TEA ESTATES PVT. LTD., v. M/s. CHANDMARI TEA CO., PVT. LTD.,¹, there can be no more dispute that this court can delink the arbitration agreement from the main document as an agreement independent of the other terms of agreements Annexures-A, B and C, assuming that they cannot be received as evidence of any transaction of property in question. There is no dispute that the arbitration agreement is valid and enforceable.

5. Therefore, the answer to the question that the agreements - Annexures-A, B and C though contained the nomenclature 'Property Management and Services Agreement', but, in fact, are lease deeds, require an adjudication and after a trial, record a finding as to whether or not the stamp duty is sufficient or insufficient. Such a trial, apparently, cannot be conveniently held by this court while exercising jurisdiction under section 11 of the Act and therefore must be adjudicated by the Arbitrator.

6. Learned counsel for the parties submit, on instructions from the parties, that Sri. Justice G. Patri Basavana Goud, former Judge of this Court, be appointed as a sole Arbitrator, to resolve the disputes that have arisen between the parties in terms of the agreements - Annexures-A, B and C including a ruling on the jurisdiction of the Arbitrator under section 16[1][a] and [b] of the Act.

7. In the result, this petition is accordingly allowed.

8. Sri. Justice G. Patri Basavana Goud, former Judge of this court is requested to enter upon reference and conduct arbitration proceedings before the Arbitration Centre - Karnataka [Domestic and International] at Bangalore, in accordance with the Arbitration Centre - Karnataka [Domestic and International], Rules, 2012.

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