IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST 2020

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CIVIL MISCELLANEOUS PETITION No.70/2019

Between:

Sri M. Prashanth Nayak,
S/o Late Prakash Nayak,
Aged about 38 years,
Residing at Dwaraka, 1st Floor,
Ananthanagar 2nd Stage,
Manipal Post,
Udupi – 576 104.   … Petitioner

(By Sri Ajith A. Shetty, Advocate)

And:

Sri Parshwanath Jain,
S/o Muniraja Poovani,
Aged about 49 years,
Residing near Shreyasamvyath,
By-pass road, Karkala Town,
Udupi District – 574 104.   … Respondent

(By Sri K. Prasanna Shetty, Advocate)

        This Civil Miscellaneous Petition is filed under Section 11(5) of the Arbitration Conciliation Act, 1996, praying to appoint an individual as Arbitrator, who in the opinion of this Hon'ble Court would be equipped to adjudicate the dispute/s between the parties herein by arbitration and grant such other relief or reliefs as this Hon'ble Court deems it fit to grant in the facts and circumstances of this case, in

the interest of justice, fairplay and equity to do so, as per Agreement for Sale dated 05.09.2017, vide Annexure-A.

This Civil Miscellaneous Petition coming on for Admission this day, the Court made the following:

ORDER

The petitioner who is stated to be a party to the agreement of sale has filed the present petition seeking for appointment of an Arbitrator in order to redress the dispute by way of arbitration as per the agreement of sale dated 05.09.2017.

2. It is submitted that the petitioner and the respondent have entered into an agreement for sale on 5.9.2017 with respect to the property bearing Sy.No.620/3A1 of Karkala Kasaba Village, Karkala Taluk, Udupi District. It is provided that the sale deed was to be executed pursuant to the agreement of sale and certain conditions have been imposed on the parties to the contract.

3.   The petitioner submits that though he was ready to pay the sale consideration, the respondent has failed to perform the obligations imposed under the agreement of sale and accordingly the petitioner was constrained to issue a legal notice as per Annexure-B dated 24.03.2018 calling upon the respondent to accept the sale consideration and take steps to clear the bank loan and execute the sale deed. It was further intimated as per the notice at Annexure-B that if the respondent did not come forward, the petitioner would be constrained to proceed in an appropriate manner and necessary steps would be taken to appoint an Arbitrator by invoking Clause-7 of the agreement of sale. Subsequently, the present petition has been filed, as the respondent has not responded to the legal notice.

4.   Learned counsel for the respondent submits that there are various defences as regards to the claim

under the agreement of sale and in fact partial repayment has been made.

5. Taking note of the nature of present proceedings and also noticing the agreement of sale at Annexure-B and as there have been no response to the notice issued to the respondent and taking note of the contentions advanced by learned counsel for the respondent, clearly there exists dispute subject to arbitration in terms of Clause-7 of the agreement of sale dated 05.09.2017. Hence, a case is made out for invoking the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) for appointment of an Arbitrator.

6. Learned counsel appearing for both the parties submit that Sri K.Shrinivas Hegde, Advocate, may be appointed as an Arbitrator.

7. Accordingly, Sri K.Shrinivas Hegde, Advocate, residing at 1st Floor, "Ashachandra Trade Center", P.P.C., 1st Cross Road, Udupi – 576101 is appointed as an Arbitrator taking note that both the learned counsel have proposed the name of said learned advocate. Said Arbitrator would enter upon the reference and dispose of the matter.

8. Office to issue notice to the Arbitrator regarding the appointment made herein.

9. Learned counsel for the petitioner is permitted to take back the agreement of sale filed at Annexure-A after furnishing a photocopy of the same for record purpose.

Sd/-
JUDGE

VGR