

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY 2021

BEFORE

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

CIVIL MISCELLANEOUS PETITION No.60/2020

BETWEEN:

1. Sri N. Prakash,
Aged about 48 years,
S/o Late Narayanaswamappa.
2. Smt. J. Nandakumari,
Aged about 41 years,
W/o N. Prakash.

Both are residing at
No.28, Chunchaghatta Village,
Konanakunte Post,
Bangalore - 560 062.

... Petitioners

(By Sri. Shivarudrappa, Advocate)

AND:

1. M/s. Pratheek Constructions,
A Partnership firm having its
Office at No.698, 2nd Floor,
29th Main, 100 feet Ring Road,
BTM Layout, 2nd Stage,
Bangalore - 560 076,
Rept. by its Managing Partner,
Mr. Pavan Kumar Tailam,
S/o Sri T. Narayana Swamy.

2. Sri Pavan Kumar Tailam,
S/o T. Narayana Swamy,
Managing Partner,
M/s. Pratheek Constructions,
Office at No.698, 2nd Floor,
29th Main, 100 feet Ring Road,
BTM Layout, 2nd Stage,
Bangalore - 560 076.
3. Sri Venkateswar Rao,
S/o N. Satyanarayana Rao,
M/s. Pratheek Constructions,
Office at No.698, 2nd Floor,
29th Main, 100 feet Ring Road,
BTM Layout, 2nd Stage,
Bangalore - 560 076.

... Respondents

(R1 to R3 - Notice held sufficient
v/o dated 18.02.2021)

This Civil Miscellaneous Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint the Arbitrator to determine the dispute between the parties herein in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as provided under Clause 15 of the joint Development Agreement and General Power of Attorney dated 26.09.2013 as per Annexures-A and B and etc.

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

ORDER

The petitioners, who are stated to be the joint owners of the property bearing No.9, Katha No.58, situated at Chunchaghatta Village, BBMP Ward No.95, Uttarahalli Hobli, Bangalore South Taluk, have filed the present petition seeking for appointment of an Arbitrator for resolving the dispute between the parties in accordance with the provisions of Arbitration and Conciliation Act, 1996 in terms of Clause-15 of the Joint Development Agreement dated 26.09.2013, a copy of which is produced at Annexure-A to the petition.

2. The petitioners submit that the first respondent Company has not taken any steps to commence the civil works nor has taken out preparatory works for execution of the project as envisaged under the Joint Development Agreement.

3. The petitioners submit that in light of such default by the respondents, a legal notice came to be issued initially terminating the Joint Development Agreement and subsequently, the legal notice came to be issued invoking the arbitration clause, a copy of which is produced at Annexure-N to the petition.

4. It is submitted that the said legal notice has come back and is returned with the postal shara 'addressee left' and the notice is issued to the developer and the partners representing M/s.Pratheek Constructions.

5. Though it is noticed that the legal notice is returned with the postal shara 'addressee left', it is made out by the petitioner that notices have been sent to the addresses as mentioned in the Joint Development Agreement.

6. It is submitted that the dispute is detailed in the legal notice and due to the absence of concurrence regarding the appointment of an arbitrator and as there was no response from the respondents, the present petition has been filed.

7. Despite service of notice, the respondents have not appeared and service has been held sufficient.

8. Taking note of the Joint Development Agreement at Annexure-A, which provides for arbitration at Clause-15 and the legal notice at Annexure-N, it is clear that there exists an agreement and there is a clause providing for resolution of disputes by way of arbitration and the dispute is detailed

sufficiently in the legal notice and in light of the same, the petition deserves to be allowed.

9. Taking note of Section 3 of the Arbitration and Conciliation Act, 1996 read with Section 27 of the General Clauses Act, 1897, the presumption can be drawn that the notice has been served on the respondents.

10. Accordingly, the petition is allowed by appointing Sri.V.N.Ravindra, Retired District Judge to enter into the said reference of Arbitration and act as the Sole Arbitrator in the present case in the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, as per the Rules governing the said Arbitration Centre.

- (i) All claims and contentions are left/kept open to be decided by the Arbitral Tribunal.
- (ii) A copy of this order be sent forthwith to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, for proceeding further in the matter.

- (iii) Registry is directed to return all original documents produced by any of the parties after obtaining Photostat copies of the same.

**Sd/-
JUDGE**

VGR
ct:mhp