

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05<sup>TH</sup> DAY OF FEBRUARY, 2016

BEFORE

THE HON'BLE MR.JUSTICE S.ABDUL NAZEER

**CIVIL MISCELLANEOUS PETITION NO.52 OF 2015**

**BETWEEN:**

Sri.T.K. Kemparaju  
S/o. Late Krishnappa  
Aged about 59 years  
Residing at No.69  
Seetha Byaraveshwara Nilaya  
Pipeline Road, Yeshwanthpur  
Bangalore – 560 022.

...Petitioner

(By Sri.B.M.Halaswamy, Adv.)

**AND**

Sri. Vishwanath Kumar  
Proprietor  
M/s.Adithi Landscaping & Constructions  
No.81, 2<sup>nd</sup> Main, 80<sup>th</sup> feet road  
RMV II Stage, Bangalore – 560 094.

Also having office at

Sy.No.9/9, Old Sy.No.9  
Myadarahalli, Abbigere to  
Keregudadahalli main road

Yeshwanthpura Hobli  
Bangalore North Taluk, Bangalore.

...Respondent

(Served-Unrepresented)

This Civil Miscellaneous Petition is filed under Section 11(5) of the Arbitration and Conciliation Act 1996, praying to refer the case for arbitration centre for appointing an arbitrator to adjudicate upon the dispute between the parties as per Joint Development Agreement dated 10.08.2012 vide Annexure-A.

This civil miscellaneous petition coming on for admission this day, the Court made the following:

ORDER

The petitioner has filed this civil miscellaneous petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') to adjudicate the dispute, which has arisen out of the Joint Development Agreement at Annexure-'A' dated 10.08.2012.

2. Though the respondent is served, it has remained unrepresented.

3. I have heard the learned counsel for the petitioner.

4. It is evident that the Joint Development agreement at Annexure- 'A' contains an arbitration clause for adjudication of the dispute, which is as under:

*"The parties hereto agree that in the event of there being any disputes with regard to this agreement or interpretation of any of the terms of this agreement, the same shall be referred to the arbitration in terms thereof; Arbitration shall be conducted as follows:*

*a) The dispute shall be referred to a panel of the arbitrators. The Landlord shall appoint one arbitrator and Developer shall appoint one arbitrator and the third being appointed by the two arbitrators nominated by the parties.*

*b) The arbitration award shall be final and binding on the parties, and the parties agree to be bound thereby and act accordingly.*

*c) The arbitral may be unanimous agreement, award to a party that substantially prevails on the merits its costs and reasonable expenses (including reasonable fees of its counsel)*

*d) Seat of such arbitration tribunal shall be at Bangalore.*

*e) The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act, 1996.”*

5. It is clear from the materials on record that the dispute has arisen between the parties in relation to the aforesaid agreement. In fact, the respondent has sent a notice as per Annexure-E dated 11/25.9.2014, pointing out that it would be better to have one arbitrator with the consent of the parties to resolve the dispute. The petitioner has sent notice at Annexure-F dated 9.10.2015 seeking appointment of sole arbitrator. In the circumstances, it is just and proper to appoint a sole arbitrator for adjudication of the dispute.

6. In the result, civil miscellaneous petition succeeds and it is accordingly allowed. Hon'ble Sri. Justice B.Padmaraj, former Judge of this Court, is requested to enter upon the reference and arbitrate over the dispute and conduct arbitration proceedings at Arbitration Centre in terms of the Arbitration Centre – Karnataka (Domestic and International) Rules, 2012. No costs.

7. Registry is directed to send a copy of this order to the Arbitration Centre, Bengaluru, forthwith.

Sd/-  
JUDGE

SA/