

GAHC010183012022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./24/2022

SMT. DRAUPADI DEVI BERIA AND ANR.
W/O LATE NETRAM BERIA, R/O BERIA BUNGALOW, AROGYA BHAWAN
ROAD, GABHARUPATHER, WARD NO. 21, P.O, P.S. AND DIST- DIBRUGARH,
ASSAM, PIN-786005

2: ASHOK BERIA
S/O LATE NETRAM BERIA
R/O BERIA BUNGALOW
AROGYA BHAWAN ROAD
GABHARUPATHER
WARD NO. 21
P.O
P.S. AND DIST- DIBRUGARH
ASSAM
PIN-78600

VERSUS

SMTI. SUSHILA DEVI AND 2 ORS.
W/O LATE SANTOSH BERIA, R/O BERIA BUNGALOW, AROGYA BHAWAN
ROAD, GABHARUPATHER, WARD NO. 21, P.O, P.S. AND DIST- DIBRUGARH,
ASSAM, PIN-786005

2:SMTI PRIYANKA GARODIA (BERIA)
W/O SRI SURYA PRATIK BERIA
R/O BERIA BUNGALOW
AROGYA BHAWAN ROAD
GABHARUPATHER
WARD NO. 21
P.O
P.S. AND DIST- DIBRUGARH
ASSAM
PIN-786005

3:RAJ KUMAR BERIA
S/O LATE NETRAM BERIA
R/O BERIA BUNGALOW
AROGYA BHAWAN ROAD
GABHARUPATHER
WARD NO. 21
P.O
P.S. AND DIST- DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH

ORDER

Date : 09-01-2023

Heard Mr. S. Deka, learned counsel for the petitioners. None appears for the respondents in spite of notice being served upon them.

- 2.** Under the circumstances, this Court has no option but to proceed with the matter in the absence of the respondents.
- 3.** The present petition has been filed seeking appointment of arbitrator in terms of Clause 19 of registered Deed of Family Partition bearing No.1669/2019 dated 12.11.2019 read with Deed of Rectification bearing No.615/2020 dated 08.06.2020.
- 4.** Before the matter was arbitrated upon, the present petitioners had approached the District Judge, Dibrugarh by filing Misc. Case (Arbitration) No.01 of 2022 under Section 9 of Arbitration and Conciliation Act, 1996 for appropriate interim orders in respect of the dispute which has arisen between the parties, which was disposed of by the learned District Judge vide order dated 25.07.2022 by passing certain interim order, however, with direction to the petitioners to approach the Arbitral Tribunal under Section 17 of the Act for any further interim measures/relief(s).
- 5.** It is the case of the petitioners that the dispute has arisen between the parties in respect of certain property arising out of the partition deed entered into between the parties

on 12.11.2019. The said partition deed, *inter alia*, provides that if any dispute or difference arise in future between the parties hereto as to the interpretation of this Memorandum or any act of thing done in pursuance thereof, the same shall be referred to the arbitrator as mutually decided between the parties and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 and/or any statutory modifications thereof as may be in force for the time being and the decision of the said sole arbitrator shall be final and binding on all the parties hereto [vide para No.19 of partition deed).

However, in the said deed, no procedure has been prescribed for the manner of appointment of the arbitrator.

6. Under the circumstances, the petitioners have approached this Court seeking appointment of arbitrator by invoking the provisions of Section 11 of the Act and in terms of the arbitration clause referred to above.

7. This Court, having considered that there is indeed, a dispute between the parties, which is arbitrable as provided under the partition deed dated 12.11.2019 referred to above and since there is no mechanism spelt out for appointment of arbitrator in the said partition deed, proceeds to appoint Mr. M.K. Bhattacharjee, retired District Judge, Assam as arbitrator to resolve the dispute between the parties subject to his consent and absence of any impediment under Section 12 of the Act.

8. A copy of this order be furnished to Mr. M.K. Bhattacharjee, who shall proceed with the arbitration in accordance with law.

9. The petitioners shall also inform the Arbitrator of the passing of this order.

10. The Arbitration Petition shall, accordingly, stand closed.

JUDGE

Comparing Assistant