

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.21 of 2015

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Nautan Shukla, Wife of Gangadhar Tiwary, Resident of Jai Prakash Nagar College
Chauk, Police Station K. Hat, District- Purnea and one of the Partner of M/s
Krishna Construction, a registered partnership firm situated at Teachers Colony,
Bhatta, District- Purnea

.... Petitioner/s

Versus

Sri Shyamal Kishore Jha, Son of Late Krishna Chand Jha, Resident of Mohala-
Teachers Colony, Bhatta Bazar, Police Station- K. Hat, District Purnea, permanent
resident of Village- Khushru Patti Police Station Murligang. District Madhepura
and another partner of M/s Krishna Construction situated at Teachers Colony,
Bhatta Bazar, P.S.- K. Hat, District Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash Ojha, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-04-2017

This application under Section 11(6) of the Arbitration
and Conciliation Act, 1996 has been filed for constitution of an
Arbitral Tribunal.

The so-called arbitration clause, as alleged by the
petitioner in the agreement in question reads as under:

“18. That any dispute or difference that
may arise between the partners regarding the Partnership
or its business or regarding the interpretation of these
presents or any matter arising out of or incidental there to
shall be referred at the first instance to the Arbitration of
arbitrator or arbitrators appointed by the partners and only
in case of the dispute being undecided, the partners may
proceed in accordance with other provision of law for the
time being in force.”

(emphasis supplied)



From the aforesaid, it is clear that in case a dispute between the parties prevails, the agreement provides that the same shall be referred at the first instance to the arbitration of arbitrator or arbitrators appointed by the partners and if the dispute is not resolved in that manner, the only procedure available is to take recourse to remedy in accordance with the common law. There is no specific agreement for resolution of the dispute by resorting to the procedure contemplated under the Arbitration and Conciliation Act of 1996.

That being so, the agreement in question cannot be considered to be an arbitration agreement in the strict sense. As a consequence thereof, provisions of Section 11(6) of Arbitration and Conciliation Act, 1996 cannot be invoked in the present case. There being no arbitration agreement between the parties, I see no reason to invoke jurisdiction of this Court.

The application is, accordingly, dismissed.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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