

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.99 of 2017

1. Syed Kamran Ali S/o late Syed Kazim Ali,
2. Anjum Ali D/o Late Syed Kazim Ali.

Both resident of Mohalla-Kazmi Begum Compound, Guzri Bazar, Opp.
Sales Tax Office, Post-Jhauganj, P.S. Khajekalan, Patna City, District-Patna.

... .. Petitioner/s

Versus

1. Adison Construction Limited, Adisons Arcade (4th Floor) Frazer Road,
Patna through Director Sri Ashok Singh, S/o Late Amardeo Singh, R/o Sunder
Apartment Flat No.5, Bhoot Nath Road, Near NMCH Kankarbagh, P.O. -
Lohia Nagar, Patna – 800020.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raj Dular Sah, Advocate
For the Respondent/s : Mr. L. N. Das, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 06-10-2017

In the matter of execution of an agreement entered into between the parties, namely the development agreement dated 22.05.2003, certain disputes have arisen. The applicants and the respondent Construction Company had entered into the development agreement in question for the purpose of developing the property by construction of flats and in the execution of the said agreement as certain disputes have arisen, this application has been filed for constitution of a arbitral tribunal for resolution of the dispute.

Admittedly, clause 18 of the agreement in question contemplates an arbitration agreement for resolution of the dispute



in accordance to the Indian Arbitration Act, 1940 as it was then existing when the agreement was executed. However, now as the respondents have not complied with the requirement of the agreement, it is stated that the matter be referred for arbitration.

A counter affidavit has been filed by the respondents and two fold submissions are made in the same. The first submission is that the application is barred by time and, therefore, the dispute cannot be referred for adjudication. It is stated that when the agreement was executed in the year 2003, certificate of possession and actual possession of the flats were granted between 01.07.2010 to 05.03.2013 and this application filed after a period of more than three years is barred by time. That apart, it is indicated that various cases have been filed between the parties before the District Consumer Forum and also before the Shia Waqf Board with regard to title disputes between the parties, and therefore, the application under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable.

Having heard learned counsel for the parties and keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Indian Oil Corporation Ltd. Vs. M/s SPS Engineering Ltd.** (2011) 3 SCC 507, at this stage when only a prayer is made for Constitution of an arbitral tribunal in exercise of jurisdiction of



this Court under Section 11 of the Arbitration and Conciliation Act, 1996, the issue of limitation and the claim on merit arising out of the dispute between the parties is not to be considered. These are the issues which can be very well agitated before the Arbitrator and it would be for the Arbitrator to consider while adjudicating the dispute on the materials available on the record.

Keeping in view the aforesaid, I am not inclined to reject this application on the objections raised by the respondent, in stead liberty shall be available to the respondent to raise all the objections before the Arbitrator and it would be for the Arbitrator to consider all these objections and decide in accordance to law.

Accordingly, the application is allowed. Hon'ble Justice Sri Sadanand Mukherjee, a retired Judge of this Court, is appointed as arbitrator to adjudicate the dispute. However, in these proceedings this Court has not gone into the merits of various objections raised including the question of limitation which are left open to be canvassed by the parties before the arbitrator.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2017
Transmission Date	

