

OD – 7

ORDER SHEET  
AP 67 OF 2020  
GA 1 OF 2020  
IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

SUBRATA MITRA  
VERSUS  
SHYAMALI BASU AND ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM SINHA

Date : 17<sup>TH</sup> November, 2020.

Appearance :  
Mr. Rupak Ghosh, Adv.  
Mr. A. Basu, Adv.  
Mr. D. R. Basu, Adv.  
Mr. S. Banerjee, Adv.  
For petitioner

Mr. Debdyut Mukherjee, Adv.  
Mr. Vivek Basu, Adv.  
For respondents

The Court : Mr. Ghosh, learned advocate appears on behalf of petitioner and moves this arbitration petition for termination of mandate and appointment of substitute arbitrator.

He submits, this termination and substitution is necessary because the learned arbitrator has recused himself. There was, inter alia, a prior learned arbitrator, who had also recused. Both said learned arbitrators are retired learned Judges of this Court, the first of whom was appointed on request made to Court under section 11(6) of

Arbitration & Conciliation Act, 1996. He submits, there cannot be resistance or opposition to orders being made as prayed for since disputes between the parties have not been decided.

Mr. Mukherjee, learned advocate appears on behalf of respondents. He submits, the latter retired learned Judge had recorded minutes of 13 sitting on 4<sup>th</sup> July, 2012, withdrawing himself from office of sole arbitrator. This petition was thereafter filed on 9<sup>th</sup> February, 2020. Such is clear evidence of abandonment of claims. Today there is no live claim and the petition should be dismissed.

Adjudication on whether a claim is live is a matter that could have been gone into on pre amended provision in section 11. In any event, once the reference has commenced, it cannot be extinguished by Court on objection or contention of abandonment of claims before it. Such must be had from the Tribunal on adjudication of such contention on merit. The Court, not adjudicating the disputes referred to arbitration, will not do anything to extinguish the reference on a contention touching the claim.

There will be order in terms of prayer (a) and Mr. Suman Dutt, learned advocate is appointed arbitrator at remuneration of Rs.30,000/- per sitting, on otherwise the same terms as were directed in order dated 3<sup>rd</sup> August, 2010, of appointment made under section 11 (appearing at page 93 of the petition). In so appointing, Court has acted on suggestion of the parties.

The petition is disposed of. Petitioner is at liberty to produce copy of this order before the substituted arbitrator, to enable collection of the records and transmission thereof to the hereby appointed arbitrator. Such will be done upon notice to the respondent.

(ARINDAM SINHA, J.)