

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/270/2020

P G AND W SAWOO PVT. LTD.
VERSUS
UNION OF INDIA, MINS OF FINANCE DEPT OF REVENUE

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY

Date : 16th December, 2020.

Appearance:

Mr. S. N. Mitra, Sr. Adv.

Mr. Suchayan Banerjee, Adv

... for the petitioner.

The Court: At the very outset, the first sentence of the order dated December 7, 2020 be corrected as follows:

"From the affidavit-of-service, it appears that a copy of the application has been forwarded to the respondent through electronic mail and it has received the same. However, the respondent remains unrepresented."

Today, when this application is taken up for hearing it appears that in spite of communication of the order dated December 7, 2020 none appears on behalf of the respondent to oppose this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, "the Act of 1996").

It is the case of the petitioner that in terms of a lease agreement dated December 10, 2013 executed between the parties the respondent was inducted as a tenant in respect of the entire third floor of the premises no.4, Biplabi Trailakya Maharaj Sarani (formerly known as premises No.4, Brabourne Road), Kolkata-700001(hereinafter referred to as "the said property"). The tenancy of the respondent was governed by the provisions of the Transfer of Property Act, 1882. Clause 17 of the said lease agreement contemplated that all disputes and differences arisen between the parties thereto shall be adjudicated by a sole Arbitrator under the Arbitration and Conciliation Act, 1996(in short, "the Act of 1996").

The petitioner had filed the suit, CS 42 of 2017 before this Court, against the respondent claiming recovery of possession of the said property as well as arrear rent and mesne profits. In the said suit the present respondent, as the defendant filed an application, G.A. No.2750 of 2017 under Sections 5 and 8 of the Act of 1996 alleging that the disputes raised by the petitioner are covered by the arbitration clause contained in the said lease agreement. By order dated August 29, 2017 a Coordinate Bench of this Court allowed the said application and referred the disputes between the parties to arbitration. Thereafter, on February 29, 2020 the respondent vacated the said property.

According to the petitioner, although the respondent has vacated the suit property on February 29, 2020 but it is liable to pay the claims of the petitioner account arrear rent as well as mesne profits on account of wrongful occupation of the said property. The respondent has, however, refused to pay the said claims of the petitioner. Thus, in terms of the order dated August 29, 2017 passed by learned Coordinate Bench of this Court in GA No.2750 of 2017, CS 42 of 2017 the claims of the petitioner against the respondent for arrear rent and mesne profits are to be adjudicated through arbitration. The respondent has, however, taken no step to refer the disputes to arbitration.

In spite of notice, the respondent remains unrepresented. Thus, this application is taken up for hearing in the absence of the respondent.

Considering the materials on record, I find that the existence of the arbitration agreement between the parties contained in Clause 17 of the said lease agreement dated December 10, 2013 is not in dispute. It is only at the instance of the respondent in the said order dated August 29, 2017 passed in G.A. No. 2750 of 2017, C.S. 42 of 2017 the claims of the present petitioner against the respondent including on account of arrear rent and mesne profits were referred to arbitration. The respondent has not, however, taken any step towards appointment of an Arbitrator for adjudication of the claims of the petitioner on

account of arrear rent and mesne profits. Thus, the present application succeeds.

Mr. Malay Kumar Ghosh, Senior Advocate of the Bar Library Club (First Floor) is appointed as the sole Arbitrator to adjudicate the disputes arisen between the parties relating to the said lease agreement as mentioned above.

The Arbitrator shall be free to fix his remuneration which shall be borne by the parties in equal shares.

The Arbitrator shall also be at liberty to engage the secretarial staff whose remuneration shall be borne by the parties in equal shares.

With the above direction, the application, AP/270/2020 stands disposed of.

There shall, however, be no order as to cost.

(ASHIS KUMAR CHAKRABORTY, J.)

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