

ODC-7

ORDER SHEET

AP/188/2021

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

VERDANT PROJECTS
Versus
DIPANKAR SEN AND ORS

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 8th July, 2021.

[Via video conference]

Appearance:

Mr. Mainak Bose, Adv.
Mr. Ranjit Kr. Basu, Adv.
Mr. Rajarshi Dutta, Adv.

Mr. Sabyasachi Chaudhury, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Rishabh Karnani, Adv.

The Court : This is an application filed by the petitioner who is the claimant in an arbitration proceedings for appointment of an Arbitrator in place and stead of the learned sole Arbitrator who was earlier appointed by an order of Court dated 2nd July, 2010 in AP No. 144 of 2010.

Learned counsel appearing for the petitioner places the minutes of the 49th sitting held on 19th March, 2019 which records that the learned Arbitrator tendered his resignation from the proceedings. The reason for such resignation appears to be a letter dated 15th March, 2019 received

from the respondents' advocate seeking replacement of the Arbitrator. Counsel places an order passed by a learned single Judge on 13th January, 2020 in AP No. 43 of 2019 which was an application filed by the respondents for removal of the Arbitrator. The order records the submission made on behalf of the respondents that the application has become infructuous since the Arbitrator has withdrawn from his office. Counsel submits that in view of the Arbitrator having resigned, there is a need to appoint a substitute Arbitrator under Section 15 (2) of The Arbitration and Conciliation Act, 1996.

The application is opposed by learned counsel appearing for the respondents who submits that the application is not maintainable since the agreement forming the subject matter of the arbitration are insufficiently stamped documents. Counsel submits that a dispute was raised in the arbitration with regard to the assessment of stamp duty which has since been determined by the Collector. The petitioner however has not paid the requisite stamp duty on the documents. It is also submitted that the arbitration can only proceed after the petitioner makes requisite payment of the stamp duty as assessed by the Collector.

The arbitration agreement is contained in two agreements for sale, both dated 5th October, 2005. It appears from the sittings held by the erstwhile Arbitrator that this point was taken in an application filed by the petitioner herein for the purpose of impounding the agreement for sale for assessment of the stamp duty which was to be payable under the relevant

provisions of The Indian Stamp Act, 1899. The minutes of 27th January, 2017 and 5th April, 2018 further mention the point of stamp duty to be paid by the petitioner. The Arbitrator withdrew from office thereafter on 19th March, 2019. Counsel submits that the assessment of stamp duty has since been done and payment will be made in due course in accordance with the correct procedure for such assessment.

This Court is of the view that the objection to the maintainable of the present application on the ground of insufficiently stamped documents is no longer relevant after the decision of the Supreme Court in *N. N. Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd. : 2021 SCC OnLine SC 13* where it has been held that non-payment of stamp duty on a commercial contract would not invalidate the arbitration clause or render it unenforceable.

Besides the aforesaid, the decision with regard to the quantum or the mode of assessment can very well be decided in the arbitration. The arbitration stopped at a certain juncture on 19th March, 2019 by reason of an application made by the respondents for termination of the Arbitrator's mandate which caused the Arbitrator to withdraw from the proceedings. A co-ordinate Bench passed an order based on the application of the respondents for removing the Arbitrator. The respondent cannot therefore hold up the arbitration on a plea which can be adjudicated in the arbitration proceedings after appointment of a substitute Arbitrator under

Section 15 (2) of the Act. The point with regard to the payment of stamp duty shall be decided by the Arbitrator in the course of the proceedings.

AP 188 of 2021 is allowed for the above reasons and disposed of. Madhumati Mitra, a retired Judge of this Court is appointed as Arbitrator in place and stead of the erstwhile Arbitrator.

The Arbitrator shall be at liberty of fixing her remuneration in the first sitting of the proceedings. The Arbitrator will be given secretarial and other assistance, expenses of which shall be equally borne by the parties.

(MOUSHUMI BHATTACHARYA, J.)

RS