

ORDER

OD-5

AP/213/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

BHAGYA LAXMI NIRMAN PVT. LTD.
VERSUS
ARCHANA MISHRA & ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 24th November 2021.

[Via Video Conference]

APPEARANCE:

Mr. Aniruddha Mitra, Advocate
.....for the Applicant.

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of an independent Arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out the two affidavits of service which are on record showing that the respondents are already served in the matter. On the previous date also, no one was present. Therefore, the case was adjourned. Today also, nobody has appeared on behalf of the respondents to oppose the present application.

The plea of the applicant is that the development agreement dated 11th March, 2005 was executed between the parties and thereafter, the supplementary agreement dated 30th November, 2008 was executed and that the title deeds were mortgaged by the respondents in favour of the applicant and in pursuance to the agreements, the steps were taken and some rooms were also vacated by the tenant and the opposite parties/owners were participating in the negotiation till middle of 2019 but they have refused to talk to the representative of the petitioner on 31st December 2020. In the meanwhile, the notice dated 16th December 2020 was served by the applicant to the respondents seeking certain information and pointing out the defaults

on the part of the respondents. When no response was received, the applicant served the notice dated 5th January 2021 invoking the arbitration clause and making a request to the respondents to appoint an arbitrator, but the said notice also remained unresponded.

The original agreement dated 11th March 2005 contains the following arbitration clause:-

“13.6 In the event of the disputes between the parties hereto concerning this agreement in any manner whatsoever shall be referred to sole arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.”

The supplementary agreement dated 30th November 2008 contains the Clause No.3 stating that the principal agreement shall remain fully binding on the parties and have full force and effect.

Since no one is present for the respondent, therefore, the above arbitration agreement and the arbitration clause have remained undisputed.

Having regard to the circumstances of the case and the plea taken in the application, I am of the opinion that the dispute exists between the parties and the same is required to be resolved by appointing an independent arbitrator.

Hence, AP No.213 of 2021 is disposed of by appointing Mr. Saikat Banerjee, Advocate, 5, Shyamananda Road, Kolkata – 700 025 (M:9830166896) as the arbitrator to resolve the dispute between the parties.

(PRAKASH SHRIVASTAVA, C.J.)