

ODC-17

ORDER SHEET

AP/257/2021

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

BIMLA DEVI JAISWAL
Versus
M/S. INDUS TOWERS LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : July 19, 2021.

[Via Video Conference]

Appearance:
Mr. Shaunak Ghosh, Adv.
Mr. Rajib Mullick, Adv.
...Petitioner

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Arindam Chandra, Adv.
Mr. Atish Ghosh, Adv.
...Respondent

The Court : The affidavit-in-opposition and the reply are filed in Court and are taken on record.

The disputes between the parties in this application are under Section 9 of The Arbitration and Conciliation Act, 1996 (the Act) appear to involve around roof-rights of a building where the respondent has constructed a mobile tower. The claim in the present petition relates to unpaid occupational charges which, according to the petitioner, has been

paid by the respondent to other parties in derogation of the terms of the two agreements executed between the petitioner and the respondent in 2001 and 2014.

Learned counsel appearing for the petitioner is aggrieved by the action of the respondent in failing to pay occupational charges for use of the roof of the particular premises and paying the same to the other flat owners of the premises. According to counsel, the respondent has paid the amounts which should have come to the petitioner and instead made the same to the respective flat owners. It is also submitted that the petitioner has obtained an order of injunction against the flat owners from disturbing the petitioner's rights in the roof in a suit filed by the petitioner against the flat owners from the City Civil Court. It is also submitted that the petitioner cannot be deprived of its rightful dues for the respondent's lack of access to the roof for a period of 7-8 days. It is also the petitioner's case that a notice of eviction has been served by the petitioner on the respondent in December, 2020.

Learned counsel appearing for the respondent takes a preliminary objection to the maintainability of the application on the ground that in the supplementary agreement of 14th May, 2014, there is no specific incorporation of the arbitration clause contained in the earlier agreement of 19th January, 2001. Counsel feigns ignorance of any order of injunction passed by the City Civil Court relating to the petitioner's undisturbed use of the roof. Counsel places correspondences between

the parties in 2018 which records the petitioner virtually giving up on the continuing imbroglio on the use of the roof for the mobile tower. It is also submitted that the two agreements are unregistered and unstamped documents and is not a licence agreement at all.

Upon hearing learned counsel, it appears that the only relief sought by the petitioner is in the nature of monetary compensation on account of arrear license fees till 31st December, 2020. The petitioner has not prayed for any other relief in relation to either the petitioner's use of the roof or restraining the respondent from the use of the roof. It also appears from the letters exchanged by the parties on 3rd September, 2018 and 14th November, 2018 that the right to use of the roof in respect of the mobile towers continued to remain obstructed. In fact, the letter written by the petitioner's lawyer on 14th November, 2018 clearly records that the petitioner did not have access to the roof of the premises as on that date for which the petitioner was constrained to file a suit in the City Civil Court. In the said letter, the petitioner had in fact asked for "breathing space" for obtaining suitable orders in the said proceedings.

It appears from the material on record that the basis of the petitioner's claim, namely, payment of arrear occupational charges is a matter which can be sorted out in arbitration and no interim orders of protection are called for nor claimed in the petition. The point of the arbitration clause being in dispute and not being specifically incorporated in the later agreement between the parties is an issue which

can also be decided in arbitration in accordance with the view of the Supreme Court in *Inox Wind Limited vs. Thermocables Limited* (2018) 2 SCC 519. The petitioner has not been able to make out a case of any urgent nature of relief or protection as provided under Section 9 of the Act. The dispute is of 2018 and appears to have continued till filing of the present application in April, 2021, which further suggests that there is no urgency for interim orders in this application. The parties are at liberty to thrash out their differences in arbitration, if they so wish, but no interim orders at this stage are called for.

AP No. 257 of 2021 is accordingly dismissed without any order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

sg.