

ORDER SHEET

AP 388 of 2019
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

KIRAN PATRA AND ANR.
VS
RATNA DEY AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 22nd March, 2021.

(Via Video Conference)

Mr. Swatarup Banerjee,
Ms. Ruchika Mall, Advs.
...for the petitioner
Mr. Mainak Bose,
Mr. J.N. Manna, Advs.
...for respondent nos. 1 and 3
Mr. Mahendra Prasad Gupta,
Mr. Ayan Mitra,
Ms. Antara Panja, Advs.
...for respondent no. 2

The Court: The petitioner seeks appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

Learned advocate appearing for the petitioner submits that, the petitioner and the respondents entered into a registered development agreement. He draws the attention of the Court to the arbitration clause in such registered development agreement. He submits that, disputes and differences arose between the parties with regard to the registered development agreement. He draws the attention of the Court to the letter dated February 21, 2019 issued by the advocate for the respondents stating that the address of the respondents were at the place which is recorded in the registered deed of development agreement. He submits that, the petitioner invoked the arbitration clause by the letter dated April 5, 2019. The letter was issued to the respondent at the address as described in the registered deed of development. The respondents received such notice as will appear from the postal receipts. Subsequently, on May 1, 2019 two of the

respondents claimed that they were not agreeable to arbitration. He submits that, the respondent no. 1 is the mother of the respondent nos. 2 and 3. It is the ploy of the respondents to reply to the notice invoking the arbitration by two of them leaving the other one to contend that he did not receive the notice under Section 21 of the Act of 1996. He relies upon Section 3 of the Act of 1996 to contend that the petitioner was required to issue a written communication at the place of business or habitual residence or the mailing address of the respondents. The respondents not having agreed to the appointment of an arbitrator, in the facts of the present case, the arbitrator should be appointed.

Learned advocate appearing for the respondent nos. 1 and 3 submits that, the petitioner is yet to serve a notice upon the respondent no. 2 for arbitration. Therefore, in terms of Section 11(3) of the Act of 1996, the present petition is premature as the petitioner is yet to establish service of the notice invoking the arbitration clause on the respondent no. 2.

Learned advocate appearing for the respondent no. 2 submits that, in terms of the registered development agreement, his client was shifted from the address shown in the registered development agreement to a different property. Such shifting was done at the behest of the petitioner. The petitioner was aware of the new address of the respondent no. 2. Despite the same, the petitioner did not issue any notice under Section 21 of the Act of 1996 to the respondent no. 2. He refers to the affidavit of service filed in Court to contend that the petitioner served the respondent No. 2 at a different address.

The present application is pending since 2019. It was taken up for consideration on diverse dates by the co-ordinate Benches. None of the respondents filed any affidavit dealing with the allegations as contained in the petition over the period of time when the petition was taken up for consideration by the other Benches. It appears from the notings on the back sheet of the petition that, the application was initially dismissed for default on December 11, 2019. It was subsequently restored. It was taken up for consideration on December 10, 2020, December 15, 2020, December 17, 2020, January

5, 2021, January 6, 2021, January 11, 2021 one Bench and on February 4, 2021, February 5, 2021 and February 10, 2021 by the next Bench. The respondents therefore had numerous opportunities to file affidavits, if they wanted to. They chose not to do so.

The fact that the parties entered into the registered development agreement is not disputed. The existence of the arbitration agreement is also not disputed. What is being contended is that the respondent no. 2 was not served with a notice under Section 21 of the Act of 1996.

There is a writing dated April 5, 2019 issued on behalf of the petitioner invoking the arbitration clause in the registered deed of development. This writing dated April 5, 2019 was sent by speed post with acknowledgement due to all the respondents. The respondent no. 2 received such notice on April 8, 2019. This receipt is not contested by the respondent No. 2 by filing an affidavit. Prior to the petitioner invoking Section 21 of the Act of 1996 by the notice dated April 5, 2019 the respondents through their advocates letter dated February 21, 2019 issued a letter to the petitioner claiming that disputes and differences had arisen in terms of the registered arbitration agreement. In such notice the respondents were described to be residing at the same place as described in the registered deed of development. The notice under Section 21 of the Act of 1996 issued by the petitioner on April 5, 2019 was addressed to the same address of the respondents as described in the registered deed of development as well as in the notice dated February 21, 2019.

Under Section 3 of the Act of 1996, any written communication is deemed to have been received if it is delivered to the addressee personally or at its place of business or habitual residence or mailing address unless otherwise agreed by the parties. In the facts of the present case, the petitioner established delivery of the notice under Section 21 of the Act of 1996 dated April 5, 2019 at the address of the respondents as described in the registered deed of development and the address given by the respondents in the notice dated February 21, 2019.

In the facts of the present case, therefore the respondents were served a notice under Section 21 of the Act of 1996. Such service was received on April 8, 2019. The present petition was affirmed on June 24, 2019 after expiry of 30 days from the date of receipt of the notice under Section 21 of the Act of 1996.

In such circumstances, the present petition cannot be said to be premature.

There remaining disputes and differences between the parties governed by the arbitration agreement as contained in the registered deed of development, it would be appropriate to refer the parties to arbitration.

Mr. Anil Gupta, Advocate, Bar Library Club is appointed as the arbitrator in terms of the arbitration Clause contained in the registered deed of development. Learned arbitrator is at liberty to fix his remuneration.

The remuneration of the arbitrator will be paid equally by the petitioner on one part and the respondents jointly on the other part. The parties will bear the costs and expenses of the arbitration in the same proportions.

The parties are at liberty to communicate this order to the learned Arbitrator.

AP 388 of 2019 is disposed of accordingly.

(DEBANGSU BASAK, J.)

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