

AP/392/2021
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

SMT. KALYANI SEN AND OTHERS
VERSUS
SRI DEBJIT SAHA

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 8th December, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Satadeep Bhattacharyya, Advocate
Mr. Sumanta Biswas, Advocate
Mr. Bikash Shaw, Advocate
.....for the applicants

The Court:- The affidavit of service dated 22nd September, 2021 indicates that the respondent was served. On 22nd September, 2021, this Court had directed the applicant to inform the respondent about the next date of hearing as no one had appeared for the respondent in spite of service. Fresh affidavit of service dated 15th November, 2021 has been filed indicating that the respondent was informed again.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the disputes between the parties.

The record reflects that the agreement dated 23rd May, 2011 was entered into between the parties for constructing the new structure after demolition of the old one in the premises in question. The dispute had arisen between the parties, therefore, invoking the arbitration clause, notice dated 13th January, 2021 was sent by the applicant to the respondent for appointment of the arbitrator but in spite of service of notice, no response was received. Hence, the present application has been filed.

The agreement contains the following arbitration clause:

“ARTICLE-XI : ARBITRATION

If at any time dispute arises between the parties hereto and their representatives regarding the constitution or interpretation of any of the terms and conditions, clauses, Articles, herein contained or touching these presents or determination of any scope, rights, liability, benefits & privileges of any of the parties under this agreement, the same shall be referred to arbitration and same shall be deemed to be in reference with the meaning of Arbitration and Conciliation Act and the rules framed thereon for the time being in force or any statutory enactments or modifications thereunder, and all the provisions of Indian Arbitration and Conciliation Act, 1996 shall apply.”

The respondent has not chosen to appear before this Court in spite of service of notice. Hence the agreement as also the arbitration clause has remained undisputed. Since the dispute has arisen, therefore, in terms of the arbitration clause an independent arbitrator is required to be appointed to resolve the dispute.

Accordingly, AP No.392 of 2021 is allowed by appointing Mr. Samar Roy, a retired District Judge [Mobile Nos. 8334021008 / 9434212295] as arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)