

12-04-2022  
ct no. 18  
Sl. 29  
Sayandeep

**CO 4154 of 2019**

Srimanta Kumar Mondal  
-Versus-  
Mrinal Kanti Mondal & Ors.

Mr. Probal Kr. Mukherjee  
Mr. Suhrid Sur

..... for the petitioner

Mr. Partha Pratim Roy  
Mr. Sarbananda Sanyal  
Ms. Poulami Chakraborty

..... for the opposite party No. 01

The present application under Article 227 of the Constitution of India is directed against order No. 33 dated July 11, 2019 passed by the learned District Judge in this Arbitration Case No. 60 of 2010.

The opposite party No. 1 in the 2<sup>nd</sup> Court of learned Civil Judge (Junior Division), Jangipur, District- Murshidabad filed a suit being Original Suit No. 20 of 2005 for dissolution of partnership firm under the name style "Joy Guru Construction".

In view of the existence of an arbitration clause in the deed of partnership, the defendant no. 1, the petitioner herein in the said suit filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 for reference of the dispute between the parties to an arbitrator.

The learned Trial Judge by the order dated April 05, 2006 dismissed the said application.

The petitioner assailed the said order in revision being C.O. 2086 of 2006 and the learned Single Judge of this Court by the judgment and order dated April 04, 2007 allowed the said revisional application by directing the learned Trial Judge to take appropriate measure for reference as sought for in the application under Section 8 of the Arbitration and Conciliation Act, 1996.

The petitioner thereafter filed an application before the learned Trial Judge for return of the plaint of the said suit for filing of it before the appropriate Court. The learned Trial Judge by the order No. 35 dated January 04, 2008 dismissed the said suit.

The plaintiff challenged the said order in revision being CO No. 2543 of 2008. The learned Single Judge of this Court by the judgment and order dated September 14, 2010 allowed the said revisional application thereby directed the learned Trial Judge to return the plaint of the said suit to the plaintiff for filing of the same to the appropriate Court as defined under Section 2(e) of the Arbitration and Conciliation Act, 1996.

The plaintiff/opposite party No. 1 took return of the said plaint of the said suit in terms of the said order and filed it before the learned District Judge,

Murshidabad giving rise to the connected Miscellaneous Arbitration Case No. 60 of 2010.

The learned District Judge by the order impugned has directed the parties to furnish the name of the arbitrators and fixed the said misc. case for further order. In the said order it has been held that the Court is bound to take appropriate measure for reference of the differences to arbitration and, hence, the matter is required to be referred to arbitration and, as per arbitration clause, each party shall be entitled to nominate their arbitrators. So, this Court thinks it fit to direct the parties to refer the name of the arbitrators.

Mr. Probal Kumar Mukherjee, learned Senior Counsel for the petitioner submits that the direction passed by the learned District Judge to the parties to furnish the name of arbitrators is beyond the scope of Section 8 of the Arbitration and Conciliation Act, 1996 as the power and jurisdiction to appoint an arbitrator on the request of the parties in terms of Section 11 thereof vest exclusively to the Supreme Court of India or to the High Court.

Mr. Partha Pratim Roy, learned advocate for the plaintiff/opposite party does not seriously dispute the said submission of Mr. Mukherjee.

Heard learned advocate for the parties, perused the material on record, it is rightly submitted by Mr. Mukherjee that the direction of the

learned District Judge directing the parties to furnish the name of the arbitrator is beyond the scope of Section 8 of the Arbitration and Conciliation Act, 1996 and *de hors* the provisions of Section 11 thereof as such the said direction is set aside.

The opposite party no. 1 is at liberty to take appropriate steps for appointment of arbitrator in accordance with Section 11 of the said Act of 1996.

CO 4154 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

**(Biswajit Basu, J.)**