

AP/162/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONENTERTAINMENT UNLIMITED
VERSUS
P AND P ENTERTAINMENT LLPBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 11th November, 2022.

APPEARANCE:

Mr. Gupta Nath Prasad, Advocate
..... for the applicant.

The Court:- Affidavit of service filed by the applicant along with the proof of publication of notice in two daily newspapers in compliance of the order of this Court dated 26th August 2022 is taken on record.

In spite of service of notice, no one is present for the respondent.

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

Learned counsel for the applicant has pointed out that the Memorandum of Agreement dated 1st August 2019 was entered into between the parties which contained the following arbitration clause:-

“G. Arbitration: If any dispute arises, before going to any legal suit or FIR, both the parties will enter into arbitration to resolve the dispute related to this agreement. The Arbitrator will be appointed by both the parties on mutual consent. The Arbitrator must not be related with the said agreement or with the parties. Any dispute arising out of this Agreement/interpretation of any clause may be referred to Arbitrator appointed commonly by all the two parties, whose decision shall be final and binding on all partners under the Indian Arbitration and Conciliation Act, 1996.”

He has also submitted that since dispute had arisen between the parties, therefore, the applicant had served the notice dated 12th January 2022 upon the respondent invoking the arbitration and proposing the name of the sole arbitrator.

Submission of learned counsel for the applicant is that though the arbitration agreement exists and due notice was served, the arbitrator has not been appointed to resolve the dispute.

In spite of service of notice in the present case, no one has appeared for the respondent to dispute the arbitration clause or the factum of existence of the dispute between the parties or the service of notice under Section 21 of the Arbitration and Conciliation Act. Hence, I am of the opinion that a case is made out to appoint the sole arbitrator to resolve the dispute between the parties.

Accordingly, AP is allowed and Mr. Farhan Ghaffar (Mob.9830179148), Advocate of this Court, is appointed as sole arbitrator to resolve the dispute between the parties, subject to submission of declaration by the arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the arbitrator by the Registrar, Original Side forthwith.

(PRAKASH SHRIVASTAVA, C.J.)