

AP/279/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONM/S. RAYCON ENGINEERS
VERSUS
SMT. RAJLAXMI SARDARBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 17TH JUNE, 2022

APPEARANCE:

Mr. Swatarup Banerjee, Advocate
Mr. Dwarikanath Mukherjee, Advocate
Mr. Ratul Biswas
.....for the applicant.

The Court:- Affidavit of service filed by the applicant indicates that the respondent has been served twice yet 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 development agreement dated 16th September, 2013 was entered into between the parties which contains the following arbitration clause:-

“5. If any dispute or difference which may arise between the parties with regard to the construction, meaning, purport, terms and effect of this Agreement or any part thereof, or respecting the construction or any the matters relating to the construction shall be referred to Arbitrator as per Arbitration and Conciliation Act, 1996, including its statutory modification and re-enactment, and award passed by the Arbitrator will be binding upon the parties herein.”

He has also pointed out that another agreement dated 20th November, 2013 being the supplementary agreement was entered into between the parties which contains the similar arbitration clause as clause no.4.

It has also been pointed out by learned counsel for the applicant that some disputes had arisen between the parties, therefore, initially a demand

notice dated 15.11.2021 was served by the applicant on the respondent and thereafter the notice dated 29th January, 2022 in terms of Section 21 of the Act was served upon the respondent but no response was received. He has pointed out that the dispute exists between the parties, therefore, an independent arbitrator is required to be appointed to resolve the dispute.

In spite of service of notice, no one appears on behalf of the respondent to contest the above submission.

Having regard to the aforesaid and considering the fact that the existence of the arbitration agreement as also the dispute and service of notice has remained undisputed, I am of the opinion that a case for allowing the prayer for appointment of an independent arbitrator to resolve the dispute between the parties is made out.

Accordingly, AP is allowed. Mr. Sukumar Bhattacharya (M:9830426164), an Advocate of this Court is appointed as Arbitrator to resolve the dispute between the parties.

The appointment is 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.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)