

AP/377/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONNASHIRUDDIN MOLLAH
VERSUS
DEBABRATA MONDAL AND ANR.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 1st July, 2022

APPEARANCE:

Mr. Pratip Mukherjee, Advocate
Md. Ismail, Advocate
Mr. Omar Faruk Gazi, Advocate
.....for applicant.
Mr. Atarup Banerjee, Advocate
.....for respondents.

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointment of an independent arbitrator to resolve the dispute between the parties.

The arbitration agreement dated 27th November 2020 is not in dispute.

It is pointed out by learned counsel for the applicant that the applicant had approached the competent court under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measure and the competent court had passed the order dated 25th March 2022. Thereafter, the applicant was required to approach this Court under Section 11 of the Act within 90 days. Hence, he has served the notice dated 30th March 2022 and within the stipulated period filed this AP.

The AP has been opposed by learned counsel for the respondents on two grounds, firstly that the agreement itself has been terminated, therefore, arbitration clause does not survive, and secondly, since the applicant had issued the second notice under Section 21 of the Act, therefore, he is not entitled to approach this Court.

So far as the first ground is concerned, the law is well settled that even after termination of the agreement, the arbitration clause contained therein survives. Hence, such submission of learned counsel for the respondents cannot be accepted. The giving of notice invoking arbitration clause on 30th March 2022 also does not come in the way of the applicant approaching this Court. In these circumstances, I am of the opinion that the prayer which is made by the applicant for appointment of independent arbitrator cannot be declined.

Hence, AP is allowed.

Soumya Dasgupta (Mob. No.9830576448), an advocate, is appointed as the arbitrator to resolve the dispute between the parties.

The appointment of the arbitrator 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 within four weeks.

Registrar, Original Side is directed to communicate this order to the Learned Arbitrator forthwith.

(PRAKASH SHRIVASTAVA, C.J.)