

AP/381/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONUSHA MARTIN LIMITED
VERSUS
DIVINE EXPRESSIONS AND ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 1st July, 2022

APPEARANCE:

Mr. Rishad Medora, Advocate
Ms. Sarada Hariharan, Advocate
.....for applicant.

The Court:- Learned counsel for the applicant, referring to the affidavits of service dated 16th June 2012 as also 29th June 2022, has submitted that the respondents have been served twice and as they have refused to accept the notice sent by speed post, they have also been served through email which they have accepted.

In spite of service of notices, no one is present for the respondents.

Learned counsel for the applicant has pointed out that the consignment agreement dated 29th June 2015 was entered into between the parties which contains the following arbitration clause:-

“39. In case of any dispute or differences between the parties, the same will have to be remedied by either party within 30 days. In case of dispute not remedied within the said period, the same shall be referred to the arbitration in accordance with the Arbitration and Conciliation Act 1996. The appointment of Sole Arbitrator shall be made in terms of Section 10 of the Arbitration and Conciliation Act. The arbitration shall be held at Kolkata.”

He has further submitted that in extension of the earlier agreement, another holding agency agreement was executed for the same purpose between the parties on 30th June 2017 which contains the following arbitration clause:-

“15.1 Any dispute or difference whatsoever arising between the parties, out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof, such dispute shall be first amicably settled by and between the parties. If

the amicable settlement fails then it shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996. The language of arbitration shall be English and place of arbitration shall be Kolkata.”

He has also pointed out that since the respondents have not made payment to the department, therefore, the applicant had claimed refund of the money along with interest and penalty and accordingly, the notice dated 3rd February 2022 was sent invoking the arbitration clause which was duly served upon the respondents, but no reply was sent.

In the present AP also, no one is present for the respondents to dispute the above contentions of the applicant.

Since the arbitration agreement exists and the dispute has also arisen, therefore, I am of the opinion that the AP deserves to be allowed by appointing a sole arbitrator to resolve the dispute between the parties.

Accordingly, AP is allowed.

Justice Pranab Kumar Chattopadhyay (Mob.No.9830929721), a retired Judge of this Court, 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.)