

OD-17

ORDER SHEET
AP/483/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

DEBJANI DAS AND ANR.
-VS-
SONALI SONI

BEFORE:
HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE: 8TH JULY 2022.

APPEARANCE:
Mr. S. Sengupta, Adv.; Mr. B. Sen, Adv., for petitioners.

None for respondent.

THE COURT: The affidavit-of-service filed by the petitioners is taken on record. It is submitted by the counsel for the petitioners that the postal notice sent to the respondent was refused. Therefore, there is presumption of service in view of the judgment of the Hon'ble Supreme Court in the case reported in (2017) 5 SCC 737, and even otherwise the respondent has been served through email.

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

Learned counsel for the petitioners has pointed out that the agreement for leave and licence, dated March 1, 2020 was executed between the parties. The said agreement contained the arbitration clause as under:

“ARBITRATION: All disputes and differences arising out of this agreement or any relation to determination of any liability of the parties hereto or the construction and interpretation of any of the terms and/or meaning hereto shall be referred to the Joint Arbitrators to be nominated by the parties hereto and any case of any difference of opinion amongst the said arbitrators by appointing an umpire under the provision of Arbitration Act, 1996 or any statutory modification or enactment from time to time in force and the award given by the said Arbitrators or Umpires shall be final conclusive and binding upon the parties.”

In terms of clause 15 of the said agreement, only the Courts at Kolkata has the jurisdiction.

It is also pointed out by learned counsel for the petitioners that since the dispute had arisen between the parties in respect of possession, arrears of rent and mesne profit, therefore the petitioners had sent the notice dated 28th February, 2022 invoking the arbitration clause and proposing the name of the Arbitrator. But inspite of receipt of the said notice, no reply was given by the respondent.

The above contention of the learned counsel for the petitioners has remained uncontroverted as no one has appeared for the respondent.

Since the arbitration agreement exists between the parties and the arbitration clause has also been invoked by serving a notice under section 21 of the Arbitration and Conciliation Act, 1996, and the dispute also exists, I am of the view that a case is made out for allowing the arbitration petition.

Accordingly, A.P. No.483 of 2022 is allowed.

Mr. Dibyendra Narayan Ray, an Advocate of this Court (Mob. No.9831044162), is appointed as sole Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the sole 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.

A.P. No.483 of 2022 accordingly stands disposed of.

(PRAKASH SHRIVASTAVA, CJ)

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