

AP/500/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONSUKUMAR RAY AND ORS.
VERSUS
KESHRI NIKETAN PRIVATE LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 30TH SEPTEMBER, 2022APPEARANCE:
Mr. Shounak Mukherjee, Advocate
Mr. Anupam Ghosh, Advocate
....for the petitioners
Mr. Avik Datta, Advocate
...for the respondent

The Court:- This application under Section 11 read with Section 15 of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointment of substitute Arbitrator.

Learned counsel for the applicants has pointed out that the development agreement dated 23rd May, 2012 was executed between the parties, which contains the following arbitration clause:-

ARTICLE XIV: ARBITRATION:

All disputes and differences between the parties hereto in any way relating to this agreement and/or arising out of the provisions hereof shall be referred to the Arbitration of the learned Advocate and Arbitrator namely, A.K. Chowdhury, Advocate of A.K. Chowdhury & Co., Advocates of 10, Old Post Office Street, Room No.21, 1st floor, Kolkata 700 001. The Arbitrator shall be entitled to appoint an umpire. Such Arbitration shall otherwise be in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder.

He has further submitted that the respondent had initially filed the application under Section 9 before the Commercial Court at Alipore. Thereafter, the respondent vide communication dated 12th October, 2020 had informed the applicants about the appointment of named arbitrator to settle the dispute. The applicants had agreed to the same vide communication dated 19th October, 2015. Thereafter, the named Arbitrator had refused vide communication dated

4th March, 2022. Therefore, the applicants by letter dated 23rd March, 2022 had made a request to the respondent to nominate the Arbitrator for resolving the dispute. In that communication, he had also proposed the name of the Arbitrator. Though the said letter was received by the respondent, but no response was given. On the contrary, vide communication dated 8th March, 2022, the respondent had asked the applicants to refund a sum of Rs.20 lakh. In the above background, the present application is filed.

This Court by order dated 9th September, 2022 had granted opportunity to the learned counsel for the respondent to file affidavit-in-opposition within two weeks but no affidavit-in-opposition has been filed till now. The learned counsel for the respondent has raised an objection that in terms of the arbitration clause, it is for the named arbitrator to appoint an umpire. Such objection cannot be accepted in view of the fact that the Arbitrator himself has refused.

Hence, in view of the aforesaid, I am of the opinion that a case for allowing the prayer for appointment of substitute arbitrator is made out. AP is allowed. Mr. Rudraman Bhattacharyya, Advocate (Mob.9830731277) is appointed 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 learned Arbitrator by the Registrar, Original Side forthwith.

(PRAKASH SHRIVASTAVA, C.J.)