

AP/523/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONLAKSHMI NARAYAN MISRA
VERSUS
SHYAMAL DUTTA AND ANR.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 23RD SEPTEMBER, 2022

APPEARANCE:

Mr. Sutirtha Das, Advocate
.....for the petitionerMs. Sumouli Sarkar, Advocate
....for the respondents

The Court:- Affidavit of service filed by the applicant is taken on record. This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the development agreement was executed between the applicant and the respondent no.2 with the respondent no.1 and the said agreement contains the following arbitration clause:-

“THAT all disputes arising out of the Agreement or regarding any matter connected with the Agreement or any dispute between the Owners and the Developer with regard to terms of this Agreement shall be settled by negotiations. If no settlement can be arrived at as a result of these negotiations the dispute shall be referred to the Arbitration of two Arbitrators one to be appointed by each party. The decision of the Arbitrators shall be final and binding upon both the parties. The provisions of the Arbitration Act, 1996 as modified from time to time and in force shall apply to such arbitration. The place of Arbitration shall be at jurisdiction of the competent civil court at Durgapur, District Paschim Bardhaman. In case of disagreement with the decision of the arbitrators, one common arbitrator with the consent of the appointed arbitrators will be appointed for final decision and the majority decision of all the arbitrators shall be binding on both the parties.”

He further submits that since the dispute had arisen in respect of compliance of the conditions of the agreement, therefore, invoking the

arbitration clause, the applicant had sent the notice dated 05.04.2022 to the respondent no.1. The said notice was duly served upon the respondent no.1, but no response to the said notice was given.

Learned counsel for the respondent no.2 has supported the case of the applicant.

In spite of service of notice, no one is present for the respondent no.1 to dispute the arbitration agreement and service of notice under Section 21 of the Act.

Hence, in view of the undisputed position, I am of the opinion that a case for allowing the prayer for appointment of arbitrator is made out. Accordingly, AP is allowed.

Mrs. Manju Bhuteria, Advocate of this Court, is appointed as Arbitrator to resolve the dispute between the parties, 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.

(PRAKASH SHRIVASTAVA, C.J.)