

AP/530/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONSRI TAPAN SAHA & ORS.
VERSUS
SRI RAJA MALLICK & ANR.

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 2ND SEPTEMBER, 2022

APPEARANCE:

Mr. Prantik Garai, Advocate
Mr. Chandrachur Chatterjee, Advocate
....for the applicants

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of a sole arbitrator.

Learned counsel for the applicants has pointed out that the development agreement dated 3rd June, 2011 was executed between the parties which contains the following arbitration clause:-

“ARBITRATION:

45. *All disputes and differences between the parties arising out of the meaning of construction or impart of this Agreement shall be adjudicated by reference to the arbitration of two independent Arbitrators, one to be appointed by each party who shall jointly appoint an UMPIRE at the commencement of the reference and the award of the arbitrators or UMPIRE shall be final and conclusive on the subject as between the parties and this clause shall be deemed to be a submission within the meaning of the Arbitration Act, 1940 (Act 10 of 1940) and its statutory modification and/or re-enactment thereof in force from time to time.”*

The agreement also contains the following jurisdiction clause:

“JURISDICTION:

46. *The High Court at Calcutta and its subordinate Courts of South 24 Parganas at Alipore shall have the jurisdiction to*

entertain and determine all actions and proceedings arising out of these presents between the parties hereto.”

The learned counsel for the applicants has further pointed out that earlier a suit for specific performance of contract was filed wherein an application under Section 8 of the Arbitration and Conciliation Act, 1996 was moved and the Trial Court by order dated 22nd February, 2022 had allowed the application by directing the parties to appoint the Arbitrator in view of Clause 45 of the Agreement dated 3rd June, 2011. He has also pointed out that thereafter the applicants had served the notice dated 30th April, 2022 to both the respondents invoking the arbitration clause and suggesting the name of the arbitrator but no response to the said notice was received. He has also pointed out that the dispute exists between the parties in respect of the owner's allocation and the extent of AFR for which the applicants are entitled to.

In spite of service of notice, no one has appeared for the respondents to contest the above submissions. Hence, in view of the undisputed position on record, I am of the opinion that a case for allowing the prayer for appointment of an arbitrator is made out. Accordingly, AP is allowed and Mr. Shuvasish Sengupta (Mob.no.9830855276), an 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.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)