

AP/538/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

HELEN DUTTA RAY
VERSUS
UJJAL SEN & ANR.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 26th August 2022.

APPEARANCE:

*Mr. Buddhadeb Das, Advocate
.....for the applicant.*

*Mr. Debdipto Banerjee, Advocate
Ms. Snigdha Saha, Advocate
.....for the respondent no.1*

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

The development agreement dated 29th April 2017 is not in dispute between the parties. The said agreement contains the following Dispute Resolution clause:-

“22. DISPUTE RESOLUTION:

If any dispute or difference in relation to or arising out of or touching this agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement arises, the same shall be referred to the Arbitral Tribunal of a Sole Arbitrator to be jointly nominated by the parties herein, under the provisions of the Arbitration & Conciliation Act, 1996 and his decision shall be final and binding upon the parties and the venue of such arbitration shall be at Calcutta.”

It has been pointed out by learned counsel for the applicant that since the dispute had arisen between the parties, therefore, the applicant had served the notice dated 17th May 2022 to the respondents invoking the arbitration clause

and proposing the name of the sole arbitrator. The respondents, on receipt of the said notice, had given the reply dated 13th June 2022 refusing the prayer.

The sole objection of learned counsel for the respondents is that an agreement to sell dated 18th January 2021 has been executed between the applicant and some third parties, hence, they are also required to be heard in the arbitration.

In terms of the arbitration clause, the dispute between the parties to the development agreement is to be decided by the arbitrator, therefore, non-impleadment of third parties is not fatal and prayer made in the application under Section 11 cannot be denied on that ground. That apart, by mere execution of the agreement to sell, no title in the property in question is transferred. Since the arbitration agreement is undisputed and arbitration clause has already been invoked, therefore, considering the dispute between the parties, I am of the opinion that a case for allowing the prayer for appointment of an arbitrator is made out. Accordingly, AP is allowed.

Ms. Suchishmita Ghosh, an advocate of this Court (M No.7980857275), 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.)