

AP/584/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONATK MANOR DEVELOPERS LLP
VERSUS
RAJIB BHATTACHARYABEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 9TH SEPTEMBER, 2022

APPEARANCE:

Mr. Suddhasatva Banerjee, Advocate
Mr. Shashwat Nayak, Advocate
Ms. Rituparna Chatterjee, Advocate
.... for the applicant.

Mr. Sayantan Bose, Advocate
Ms. Madhurima Das, Advocate
.... for the respondent.

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the arbitrator to resolve the dispute between the parties.

The development agreement dated 14th September 2018 executed between Biswanath Bhattacharjee, original owner of the property, with the present applicant is not in dispute. The original owner, Biswanath Bhattacharjee, had died and there is stated to be a Will in favour of the present respondent. This Court in the order dated 12.08.2021 passed in FMAT/458/2021 has taken note of the Will and has observed that as long as the Will is not declared invalid, the Executor has the ostensible authority to represent the estate. Hence, it has been pointed out that the respondent is representing the estate of the deceased.

The development agreement contains the following arbitration clause:-

“22. ARBITRATION: In case there arises any dispute or difference between the parties, the same shall at first be attempted to be reconciled through the process of mediation and each party shall provide its best efforts in such reconciliation.”

22.1. If any dispute or difference is not reconciled through mediation as aforesaid, then all such disputes or differences between the parties hereto regarding the constructions or interpretation of any of the terms and conditions herein contained or touching these presents and/or the Subject Property or determination of any liability shall be referred to arbitration and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any other statutory modification or enactment for the time being in force. In connection with the said arbitration, the parties have agreed and declared as follows:

22.1.1 The Arbitration Tribunal shall have summary powers and will be entitled to lay down their own procedure.

22.1.2 The Arbitration Tribunal will be at liberty to give interim orders and/or directions.

22.1.3 The Arbitration Tribunal shall be entitled to rely on oral submissions made by the parties and to pass awards and/or directions based on such oral submissions.”

In terms of Clause 22.2, the jurisdiction lies with the Calcutta courts.

It has also been pointed out that initially, the respondent had given the notice dated 18th July 2021 invoking the arbitration clause and proposing the name of the arbitrator. Thereafter, the respondent had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the competent court and the matter had come before the Division Bench of this Court in FMAT/458/2021, which was disposed of by the Division Bench by order dated 12.08.2021 recording the agreement between the parties in respect of the issue of allocation. Some dispute arose between the parties. Therefore, the applicant had given notice dated 30th May 2022 invoking the arbitration clause which was not responded to.

The only objection of learned counsel for the respondent is that since the Section 9 application was disposed of with an agreement between the parties relating to allocation, therefore, there is no dispute existing between the parties and no case for appointment of arbitrator is made out.

Order passed under Section 9 application is only in the nature of interim measure and in terms of Section 9(2) of the Act, the arbitration proceedings are required to be started within the specified time. That apart, learned counsel for the applicant has also pointed out that the issue settled in the Section 9 proceedings was in respect of the allocation and now, the dispute is in respect of taking further action in pursuance to the power of attorney which was executed by the original owner.

Having regard to the aforesaid circumstances of the case, I am of the opinion that the objection which is raised by the respondent cannot be sustained and is hereby rejected. The application under Section 11 of the Act is allowed and Mr. Suman Dutta (Mob.No.9903402733), an advocate of this Court, is appointed as Arbitrator to resolve the dispute, 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.)