

AP/638/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

MD. IMTIAZ
VS.
NADIM RAJA

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 18TH NOVEMBER, 2022

APPEARANCE:
Mr. Aditya Mondol, Advocate
Mr. Somsuvra Mukherjee, Advocate
....for the applicant
Mr. Bidyut Kr. Halder, Advocate
Mr. Indranil Halder, Advocate
. . . for respondent.

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

Learned counsel for the applicant has pointed out that the arbitration agreement in the form of the development agreement was executed between the parties on 21st June, 2012. The said agreement contains the following arbitration clause:-

“h. If any dispute or differences between the parties hereto arise regarding any clause referred to above of this agreement or their rights and liabilities hereunder shall be adjudicated by reference to the Arbitration of two independent arbitrators one to be appointed by each party who shall appoint an Umpire if any differences of opinion between the arbitrators 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 & this clause shall be deemed to be a submission with the meaning of Indian Arbitration Act 1940 & its statutory modifications or re-enactment thereof from time to time.”

He has further submitted that the respondent had failed to give the requisite document to the applicant and thereafter had cancelled the general power of attorney. Therefore, the dispute had arisen between the parties. He has also submitted that the respondent had filed Title Suit No.426 of 2017 questioning the development agreement and the plaint was rejected by the Trial Court by the order dated 13th March, 2019 taking note of the fact that there was an arbitration agreement existing between the parties which had barred the jurisdiction of the civil Court. He has also submitted that the applicant had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 in which initially the status quo order was passed on 30th May, 2019, but subsequently the said application was rejected on 16th June, 2022 on the ground that the applicant had not initiated the arbitration proceedings. He submits thereafter that the applicant invoking the arbitration clause had served the notice dated 4th December, 2021 to the respondent proposing the name of the arbitrator but in spite of receipt of the notice, no further action was taken by the respondent.

Learned Counsel for the respondent has submitted that no work has been done by the applicant in pursuance to the development agreement. He has also disputed the invoices which have been filed by the applicant collectively marked as Annexure 'P-3' to the application.

The issue which the learned counsel for the respondent has raised relates to the merits of the dispute which can be very well gone into by the arbitrator. The merits of the claim need not be considered by this Court at the stage of the application under Section 11 of the Act. The arbitration agreement between the parties and the existence of dispute and the valid invocation of the arbitration clause have not been questioned.

In the circumstances of the case, I am of the opinion that the case is made for allowing the prayer for appointment of the sole arbitrator to resolve the dispute between the parties. Hence, the AP is allowed. Mr. Soumyajit Ghosh, Advocate is appointed as Arbitrator to resolve the disputes 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.)