

AP/668/2022

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

ASOKE RANJAN DAS
VERSUS
AMITAVA BANERJEE

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 4TH NOVEMBER, 2022

APPEARANCE:
Mr. Aditya Mondal, Advocate
Mr. Dibakar Bhattacharya, Advocate
...for petitioner
Ms. Aditi Bhattacharyya, Advocate
...for 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 disputes between the parties.

Learned counsel for the applicant has pointed out that initially the agreement dated 3rd July, 2017 was executed between the parties which contains the following arbitration clause :

“ *Arbitration:*

All disputes and/or differences, of any nature whatsoever, between the Parties relating in any manner to the Premises or anything herein contained, shall be referred to arbitration by an arbitral tribunal consisting of one arbitrator (Tribunal) to be appointed by consent of both the parties herein.

The Tribunal shall be at liberty to:

- (a) Proceed summarily and not give any reason for its award.*
- (b) Avoid all rules, procedures and/or evidences that can be lawfully avoided by the mutual consent and/or direction by the Parties, which shall be deemed to have been hereby given.*
- (c) Award damages along with the final award against the Party not complying with any interim award or order passed by the Tribunal.*

The Tribunal shall:

- (a) *Make the award within four months from the date of appointment and not give extension of more than one month at a time and that too on extremely emergent grounds but the total extensions shall not be more than four months.*
- (b) *Conduct the proceedings from day-to-day and for about 5 hours per day save for initial sittings.*
- (c) *Not grant to either of the Parties any extension of time and/or adjournment except on grounds beyond their control and only for such periods as be of the absolute minimum.*

The award of the Tribunal shall be final and binding on the parties.

The Arbitration proceedings will be in Kolkata unless otherwise agreed and the language used in the said Arbitration proceedings shall be in English.”

He has further pointed out that after the initial agreement, a subsequent agreement in continuation with the earlier agreement was executed on 1st September, 2018 and that in terms of the agreement, the applicant had invested some amount but due returns were not paid and that the terms of the agreement were not adhered to by the respondent. Hence, invoking the arbitration clause, the applicant had given a notice dated 7th February, 2022 and had proposed the name of the arbitrator which was replied by the respondent by communication dated 7th March, 2022. According to the petitioner, in that reply the respondent had not disputed the arbitration clause but had not accepted the appointment of the proposed arbitrator.

Learned counsel for the respondent has opposed the application by submitting that no proper notice invoking the arbitration clause in terms of Section 21 of the Act was served.

It is undisputed that the notice dated 7th February, 2022 was duly received by the respondent. A perusal of the said notice clearly reveals that the applicant had properly invoked the arbitration clause in terms of Section 21 of the Act, therefore, the objection of the respondent in this regard cannot be accepted.

Since the arbitration clause exists and the dispute also exists between the parties and the applicant has duly invoked the arbitration clause by serving notice under Section 21 of the Act, therefore, a case is made out to allow the prayer made in the application for appointment of the sole arbitrator. Hence, AP is allowed and Mr. Meghnad Dutta (Mob:9830175675) an Advocate of this Court is appointed as Arbitrator to resolve the disputes between the parties.

The appointment of the arbitrator is 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.

Since no affidavit has been used by the parties, therefore, the factual averments made in the application are not deemed to be admitted.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)