

AP/709/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONBARUN HALDER
VERSUS
TAPAN KUMAR ROY & ANR.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 22ND DECEMBER, 2022APPEARANCE:
Mr. Pratip Mukherjee, Advocate
Mr. Arijit ghosh, Advocate
....for the petitioner
Mr. Debjit Mukherjee, Advocate
Mr. Lalratan Mondal, Advocate
Mr. K. Bhattacharya, Advocate
...for the respondents

The Court:- Affidavit of service filed by the respondents is taken on record.

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

Learned counsel for the applicant has pointed out that agreement dated 23rd August, 2012 was executed between the parties which contains the following arbitration clause.

“15.1. All disputes and differences arising out of this agreement regarding the construction or interpretation of any of the terms and conditions herein contained or touching these presents or determination of any liability shall be referred to the sole Arbitrator, if both the parties agree upon and in the event of any disagreement the same shall be referred to the arbitration of two arbitrators, one to be appointed by the owner and another to be appointed by the developer/promoter and the same shall be deemed to be the reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory enactment or modification thereof.”

Clause 16.1 of the said agreement gives exclusive jurisdiction to the courts of Kolkata.

It has been pointed out by the learned counsel for the applicant that since earlier in respect of the same agreement, certain disputes had arisen, therefore, the matter was referred to the Arbitrator and award had been passed. He has submitted that in pursuance to the agreement the applicant is entitled to possession of flat which has not been delivered. Therefore, there is a

dispute between the parties. Accordingly, applicant had served the notice dated 16th August, 2022 upon the respondents in terms of Section 21 of the Act proposing the name of Mr. Arijit Ghosh, learned Advocate of this court as Arbitrator but the respondents vide communication dated 18th August, 2022 had not agreed for the appointment of the said arbitrator.

Learned counsel for the respondents has raised objection relating to the conduct of the applicant by submitting that earlier award was passed on 2nd February, 2015 but the applicant had not complied with the said award and in the application under Section 33 of the Act the award was passed on 12th September, 2015 and the same was also not complied with, therefore, the execution proceeding has been filed.

The effect of aforesaid conduct of the applicant can be considered by the arbitrator in the arbitration proceedings.

Having regard to the fact that the arbitration agreement is not in dispute and service of notice in terms of Section 21 of the Act has also not been disputed, I am of the opinion that a case is made out to allow the prayer for appointment of arbitrator.

At this stage, learned counsel for the parties have jointly proposed the name of Justice Subhro Kamal Mukherjee, a retired Judge of this Court as the sole arbitrator.

Accordingly, AP is allowed. Justice Subhro Kamal Mukherjee, a retired Judge of this Court (M:9830929722) 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.)