

AP/716/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONPRITAM SINGH
VERSUS
AWADH KISHORE DUBEY & ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 22ND DECEMBER, 2022APPEARANCE:
Mr. Vikash Singh, Advocate
...for the petitioner

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

In spite of service of notice, no one is present for the respondents.

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 joint development agreement dated 7th December, 2012 was executed between the parties which contains the following arbitration clause.

“ARBITRATION:

- i) *Save and except what has been specially stated hereunder all disputes differences between the parties arising out of the meaning, construction of the Agreement or of respective rights and liabilities as per this Agreement shall be adjudicated by the Arbitrator to be appointed jointly by the parties or of two independent Arbitrators, one to be appointed by each party, who shall jointly appoint an umpire at the commencement of reference and the award of the Arbitrators or the Umpire as the case may be shall be final and conclusive on the subject as between the parties.*
- ii) *Notwithstanding the foregoing provisions, the right to sue for specific performance of this contract by one part against the other as per the terms of this agreement shall remain unaffected.”*

Clause 7 of the agreement gives the jurisdiction to all the courts within the limits of Kolkata.

He has also pointed out that the disputes had arisen between the parties in respect of the implementation of the development agreement, therefore, applicant had filed an application under Section 9 of the Act wherein the competent Court had passed order of temporary injunction on 30th July, 2022. He has also pointed out that applicant had served the notice dated 1.9.2022 in terms of Section 21 of the Act and proposed the name of the sole arbitrator but no response was received from the respondents.

Before this Court also no one has appeared for the respondents to dispute the submission which has been made by the learned counsel for the applicant.

In view of the uncontroverted fact, I am of the opinion that a case for appointment of the sole arbitrator to resolve the disputes has been made out. Therefore, AP is allowed. Mr. Arik Banerjee, Advocate of this Court 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.)