

ORDER SHEET
OD-4

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

CS 271 OF 2022
IA NO. GA 1 OF 2022

IN THE MATTER OF:
NAVIYA REAL ESTATE PVT. LTD.
VS.
ICEBERG BUILDERS PVT. LTD. AND ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 30th November, 2022.

Appearance:
Mr. Suresh Sahni, Adv.
Mr. Soumik Ghosh, Adv.
For plaintiff

The Court :- The plaintiff has sought for leave under Clause 12 of Letters Patent, 1865 to institute the suit in this Court. The averments in the plaint shows that an agreement for sale was entered into by and between the plaintiff and the defendants on 9th September, 2009 in respect of a land situate and lying at Mouza-Hudrait, JL No:54 and/or Mouza-Gangragari, JL No: 37 under Police Station: Rajarhat, District – North 24 Parganas, West Bengal which is admittedly outside the Ordinary Original Civil Jurisdiction of this Court. The plaintiff is seeking specific performance of the said agreement for sale and in the alternative refund of the money paid as earnest money with interest. The main relief claimed is specific performance of an agreement relating to an immovable property admittedly outside the Ordinary Original Civil Jurisdiction of this Court. The alternate prayer will fall for consideration only if the Court is of the view that specific performance of the agreement sought for cannot be given.

The specific performance of an agreement involving an immovable property as in the instant case involves in itself the adjudication of right, title and interest in the said property particularly when the plaintiff has not averred that it is in possession of the property in question. The instant suit, therefore, is a suit for land and cannot be received, determined and tried by this Court even applying the provisions of Sections 20 and 21 of the Specific Relief Act, 1963.

The department is directed to return the plaint to the plaintiff for being presented in the competent court if permissible in law.

The department is directed to delist the suit and not to show the same to be pending.

(ARINDAM MUKHERJEE, J.)