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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/16/2023

BISWANATH DAS
VS
SUCHITRA MAJUMDER

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 21st April, 2023

Appearance:
Mr. Raj Narayan Datta, Adv.
Mr. Bibhuti Bhusan Chowdhuri, Adv.
...for the petitioner

Mr. Asit Baran Raut, Adv.
Mr. Tuhin Subhra Raut, Adv.
Ms. Ishita Raut, Adv.
...for the respondent

The Court:- Learned counsel for the petitioner seeks a reference to arbitration, in view of no consensus having been arrived between the parties regarding the arbitration.

Affidavit-in-opposition and reply filed today be kept on record.

Learned counsel for the respondent opposes the prayer under Section 11 of the Arbitration and Conciliation Act, 1996 primarily on the ground that as per the respondent, the agreement in question was executed by practice of fraud since the executant was a mental patient at the relevant juncture.

It is further argued that the enforceability of the agreement containing the arbitration clause is in dispute, since the same is not sufficiently stamped and is unregistered.

It has been well-settled, lastly in *N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others*, reported at (2021) 4 SCC 379 by the Supreme Court, that the mere deficiency in stamped duty in the agreement, even if there is any, cannot render arbitration itself nugatory.

In fact, under the purview of Section 16 of the Arbitration and Conciliation Act, 1996, it is for the arbitrator to decide all issue including those relating to maintainability.

Insofar as the allegation of fraud is concerned, the said question pertains primarily to a dispute regarding facts and has also to be decided by the arbitrator, as and when appointed.

The scope of this Court under Section 11(6A) of the 1996 Act is extremely limited and the questions raised by the respondent cannot be gone into at this stage.

Hence, since the dispute is otherwise arbitrable and comes within the purview of the arbitration clause, which is otherwise valid, the matter is decided by appointing an arbitrator.

Accordingly, AP/16/2023 is allowed, appointing Justice Prasanjit Mandal (Mob: 9836268266) , a former Judge of this Court, as the sole arbitrator to resolve the dispute between the parties, subject to obtaining his declaration/consent under Section 12 of the Arbitration and Conciliation Act, 1996.

(SABYASACHI BHATTACHARYYA, J.)