

AP/33/2023

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

RAJINDER SINGH WALIA AND ANR.
VERSUS
NABANITA SINGH

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 9TH FEBRUARY, 2023.

APPEARANCE:

Mr. Megnad Dutta, Advocate
Ms. Debanjana De, Advocate
.....for the applicants

Mr. A. C. Kar, Sr. Advocate
Mr. T. K. Aich, Advocate
Ms. Tausri Sur (Aich), Advocate
.. .. for the 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.

The case of the applicants is that the Development Agreement dated 21st August, 2009 was executed between the applicant as Developer and the respondent as Owner. The said agreement contained the following arbitration clause:-

“26. *ARBITRATION: Any dispute arising as between the Owner and the Developer regarding any matter in respect of the development of the said property shall be referred to Arbitration as per provisions of the law in this regard.*”

Further case of the applicants is that the applicants had paid part amount in terms of the Development Agreement and had also started the construction work by investing the amount but the respondent de hors the terms of the agreement had terminated the Development Agreement on 25th October, 2021. Therefore, invoking the arbitration clause, the applicants had

served the notice dated 19th July, 2022 in terms of Section 21 of the Act proposing the name of the arbitrator but in spite of service of the said notice, no reply was received, therefore, the present application has been filed.

Learned counsel for the respondent has raised the objection that the cheques which were issued by the applicants were not presented by the respondent and that the agreement itself has been terminated, therefore, arbitrator need not be appointed. He has further referred to clause 6 of the agreement by submitting that the respondent had the right to complete the construction in case of non-payment. He has also submitted that there was no valid sanctioned plan in the year 2009 and therefore, no construction was possible and the parties have abandoned the project.

Learned counsel for the applicants has pointed out that the respondent had acted beyond the terms of the agreement and since there is a dispute, therefore, the arbitrator is required to be appointed and that the issue the respondent is raising need not be decided at this stage in this proceeding.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the arbitration agreement is not in dispute between the parties and the issue which the respondent is raising is the issue on merit which can be gone into by the arbitrator. For invoking the arbitration clause, due notice under Section 21 of the Act has already been served upon the respondent.

So far as the judgement in the matter of Ramkishorelal and Another vs. Kamal Narayan, reported in AIR 1963 SC 890, relied upon by the counsel for the respondent in support of the proposition that if a document contained contradictory clause, condition or submission then the one which is mentioned in the earlier part of the document needs to be upheld, the respondent will be at liberty to rely upon the said judgement before the arbitrator if any such issue arises during the course of adjudication of the dispute on merit but at the stage of appointment of arbitrator under Section 11 of the Act, the said judgement has no relevance.

It is also not in dispute that in terms of Section 9 of the Act on the application of the applicants, the competent Court has already passed an interim order.

In these circumstances, I am of the opinion that a case is made out to allow the prayer for appointment of the sole arbitrator to resolve the dispute between the parties. Accordingly, Mr. Daman Prasad Biswas (9477235174) a retired District Judge is appointed as the sole arbitrator, 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.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)