

AP/42/2023

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

M/S. SHARNA HARDWARE
VERSUS
M/S. MICKY METAL

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

APPEARANCE:

Mr. Sudip Pal Choudhuri, Advocate
Ms. Diya Nandi, Advocate
.....for the applicant

Mr. Debraj Sahu. Advocate
Mr. Hareram Singh, 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 submission of learned counsel for the applicant is that the arbitration agreement, being Annexure P-1 at page 9 of the application, exists between the parties and that the respondent had sent the notice dated 2.1.2023 for appointment of the arbitrator in terms of Memorandum of Understanding dated 29.10.2020 which was not signed by the applicant, therefore, the applicant had sent the reply dated 6.1.2023, yet the arbitrator appointed by the respondent entered into the reference. He submits that in the aforesaid circumstances, the arbitrator in terms of the arbitration clause contained in the Agreement being Annexure P-1 is required to be appointed.

Learned counsel for the respondent has opposed the application by submitting that the alleged arbitration agreement being Annexure P-1 at page 9 is neither signed by both the parties nor is it dated. He has denied execution of any such agreement. The response of the learned counsel for the applicant is

that the applicant has also denied the execution of the Memorandum of Understanding dated 29.10.2020, therefore, the prayer for appointment of the arbitrator should be allowed.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the applicant is seeking appointment of an arbitrator on the basis of the alleged agreement being Annexure P-1 at page 9, but the said agreement is undated and the same has not been signed by the respondent. No attempt has been made during the course of argument by the learned counsel for the applicant to demonstrate that such an agreement does exist between the parties. The correctness and existence of the Memorandum of Understanding dated 29.10.2020 is not the subject matter of this application because on the basis of that Memorandum of Understanding the appointment of the arbitrator has not been sought. Hence, in the present case since it has not been established that the alleged arbitration agreement being Annexure P-1 at page 9 was executed between the parties, therefore, no case is made out to allow the prayer for appointment of arbitrator on the basis of such unproved agreement.

Accordingly, the AP is dismissed.

(PRAKASH SHRIVASTAVA, C.J.)