

AP/48/2023

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONDILIP HALDER AND ANR.
VERSUS
BALAJI CONSTRUCTION AND ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 16TH MARCH, 2023

APPEARANCE:

Mr. Dhananjay Nayak, Advocate
Mr. Sourav Sardar, Advocate
Ms. Prabhleen Bharara, Advocate
Ms. Rituparna Ghosh, Advocate
....for the petitioners

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

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 the development agreement dated 5th September, 2016 was entered into between the parties which contained the following arbitration clause:-

“In case of any dispute, difference or question arising between the parties hereto with regard to this agreement, the same shall be referred to the joint Arbitrators and in that event proceeding shall be governed by the provisions of the Indian Arbitrating Act, 1940 and/or any other rules and statutory modifications thereto.

Before any arbitration any dispute between Developer and owners should be solved mutually between two parties and witnesses.”

He has further pointed out that the applicant had approached the competent court under Section 9 of the Act and the concerned court had passed the order of injunction dated 17th February, 2022. He has further submitted that thereafter applicant had sent the notice dated 16th March, 2022 invoking the arbitration clause and proposing the name of the arbitrator to resolve the dispute between the parties. The notice was duly served upon the

respondents but no reply was given. Before this Court also, though the respondents were served but no one has appeared to contest the present AP. Hence, on the basis of the uncontested plea and uncontroverted argument of the learned counsel for the applicant, I am of the opinion that since the arbitration agreement exists between the parties and the dispute has arisen and due notice in terms of Section 21 was served, therefore, a case for appointment of sole arbitrator is made out.

Accordingly, AP is allowed and Mr. Rudraman Bhattacharyya, [9830731277] an Advocate of this Court is appointed as the sole 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.)