

AP/82/2023

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONSHRI BIKASH DEY AND ANR.
VERSUS
SMT. MALINA ADHIKARI AND ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 23RD FEBRUARY, 2023.

APPEARANCE:

Mr. Shaunak Ghosh, Advocate
Ms. Shreyashi Maity, Advocate
.....for the applicants

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

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.

Learned counsel for the applicant has pointed out that the Development Agreement dated 11th March, 2014 was entered into between the applicants and the respondents, which contained the following arbitration clause:

“18. In is further agreed between the parties that for the purpose of proper implementation of the terms and conditions of this Development Agreement and/or to enable the Developer for commercial exploitation of the Developer's allocation in the aforesaid property, the owners have agreed to execute such other or further document or documents as and when found necessary by the said Developer Any dispute touching to scheduled property or Development shall refer to arbitrator for arbitration under Arbitration & Conciliation Act, 1996.”

He has further pointed out that the disputes had arisen between the parties as the site was not handed over by the respondents to the applicants for the purpose of development. Therefore, invoking the Arbitration Clause, the applicants had served the notice dated 2nd November, 2022 upon the respondents proposing the name of the sole arbitrator to resolve the disputes. The said notice was replied by the respondents on 18th January, 2023 but the arbitration clause was not disputed therein.

Before this Court also, though the respondents are served in this AP, no one has appeared to oppose the same. Hence, the contentions of the applicants have remained unrebutted. Hence, I am of the opinion that the arbitration agreement exists between the parties, due notice in terms of Section 21 has been served and the disputes also exist. Therefore, the case for allowing the prayer made in the AP for appointment of the sole arbitrator is made out. Thus, the AP is allowed.

Mr. Debjit Mukherjee (9674292555), an Advocate of this Court 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.

(PRAKASH SHRIVASTAVA, C.J.)