

OD-5

ORDER SHEET
AP/204/2023
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

U. S. INFRA DEVELOPERS PRIVATE LIMITED
VS
SUMAN OJHA AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 20th June, 2023.

Appearance:

Mr. Souradeep Banerjee, Adv.

Mr. S. K. Banerjee, Adv.

...for the petitioner

Mr. Biswajit Mitra, Adv.

...for the respondent Nos.1 & 2

Mr. Rajeev Kumar Jain, Adv.

Ms. L. Khatun, Adv.

Ms. S. Chatterjee, Adv.

...For the Respondent Nos.3 & 4

The Court: This is an application for termination of an arbitrator's mandate under Section 14 of the 1996 Act. The petitioner seeks to place the provision of Section 14(1) (a), namely, that the mandate of an Arbitrator shall terminate if the arbitrator becomes *de jure* or *de facto* unable to perform his function or for other reasons fails to act without any due delay. The petitioner is only concerned with the first part of 14 (1) (a), namely, that the arbitrator mandate must come to an end since the arbitrator was appointed unilaterally as well as contrary to the procedure under Clause 14.1 of the Agreement for Sale dated 19.03.2020.

Learned Counsel appearing for the respondents who represents the first two parties of the said agreement submits that there is no arbitration agreement and in fact no dispute has arisen between the parties.

The sole document which the petitioner relies on for seeking termination of the arbitrators mandate is a letter dated 09.03.2023 from one Asis Bhattacharyya who describes himself as “Advocate sole Arbitrator” containing a minutes of the proceeding whereby the next date of hearing was fixed on 24.03.2023 for final disposal of an application made under Section 17 of the Act by the claimant presumably in the arbitration. There is no indication that this document was served on the petitioner. The petitioner is the third party and said to be represented by a director one Suresh Kumar Rajak. The envelope in which the document was received by the petitioner mentions one Suresh Kumar Rajak without any further evidence that the document was meant for the petitioner who was a party to the agreement.

Hence, this document alone is wholly insufficient to buttress the petitioner’s plea for termination of the arbitrator’s mandate.

The other curious fact is that the petitioner received the document on 14.03.2023 and instead of seeking a clarification from Asis Bhattacharyya as to the scope and purport of the letter, came to this Court and sought for termination of the arbitrator’s mandate. The point raised with regard to unilateral appointment of the arbitrator or the

appointment not being in terms of the Agreement can only be entertained provided the Court is satisfied that an appointment has been made and arbitration has commenced pursuant to such appointment.

Since there is no such evidence to prove the existence of a continuing arbitration, AP/204/2023 should be dismissed.

The application is misconceived and vexatious. The application hence deserves to be dismissed with costs assessed at Rs.25,000/- which is to be paid to Bharat Sevashram Sangha, Kolkata within a fortnight from date.

(MOUSHUMI BHATTACHARYA, J.)

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