

ODC-5

ORDER SHEET

AP/218/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

KRISHNA SAMANTA
VS
M/S. JATINDRA NATH SAMANTA

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : 20th April, 2023

Appearance:

Mr. Soumen Das, Adv.

Mr. Ashok Kumar Jena, Adv.

...for the petitioner

Mr. Gopal Ch. Ghosh, Adv.

Mr. Rajkrishna Mondal, Adv.

...for the respondent

The Court: This is a Section 9 application wherein the petitioner seeks certain orders based on an arbitration agreement in a partnership deed.

It is to be noted that a partnership deed was entered into on 25th April, 1995 between Jatindra Nath Samanta and his two sons, namely, Rasomoy Samanta and Tirtha Pada Samanta. This agreement did not contain any arbitration clause. Subsequently, Jatindra Nath Samanta, the father, retired from the said partnership and a new instrument of partnership was signed on 1st April, 1964 between Rasomoy Samanta and Tirtha Pada Samanta. This registered agreement contains an arbitration clause at paragraph 16.

Subsequently, on the death of Rasomoy Samanta, the wife of Rasomoy Samanta became a partner in the said partnership firm by way of a deed of partnership dated 10th September, 1991. In the latest deed of partnership of 1991, there appears to be no clause with regard to arbitration.

Counsel on behalf of the petitioner submits that since this is a continuation of partnership and the admission of Sefalika Samanta is based on the earlier partnership agreement, the arbitration clause in the earlier partnership deed would apply to the present case also.

In my view, once a new deed of partnership has been entered into between two of the parties and the same does not contain an arbitration clause, there is no scope for arbitration in the said matter. The parties have knowingly entered into a new deed of partnership and the clauses therein do not contain an arbitration clause. Just because the business is continuing with new partners cannot mean that the earlier partnership deeds would apply and the clauses therein would apply to the new partnership deed.

In light of the above finding, I am of the view that this Section 9 application is not maintainable and is, accordingly, dismissed.

Parties shall be at liberty to approach the appropriate forum for reliefs on the self-same cause of action.

(SHEKHAR B. SARAF, J.)