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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/228/2023

SMT SUMANI KUMAR AND ANR
VS
RAJIV KUMAR BID AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 1st May, 2023

Appearance:
Mr. Anirban Kar, Adv.
Mr. M. A. Elahi, Adv.
Md. S. Mridha, Adv.
...for the petitioner

The Court:- Affidavit of service filed in Court today be kept on record.

It transpires that the envelope sent to the respondent nos. 2 to 4 have returned with the endorsement "refused", which amounts to goods service. However, the intimation given to the respondent no. 1 has returned with the endorsement "not found".

Although there was some doubts as regards whether the service of notice on the first respondent has been completed, it is submitted by learned counsel for the petitioner that even at the stage of service of the notice of invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, the attempted service on the respondents suffered from the said fate. The envelopes containing the notice under Section 21, filed today be kept on record.

Hence, it transpires that since the respondents have been impleaded in the capacity of partners of the partnership firm and service on the other partners

can be deemed to have effected, substantial service has been effected on all the respondents.

It is seen from Clause 17 of the deed of partnership dated June 29, 2019 that the petitioners' predecessor-in-interest was one of the partners. Clause 18 of the same clearly stipulates that in course of partnership if any partner dies, in that event his/her legal heirs shall be "automatically" partners of the firm and with all benefits of the other partner.

Hence, it is arguable as to whether the petitioners have, by operation of the said clause, automatically become a partner and, as such, comes within the ambit of "partners" as used in Clause 17, which is the arbitration clause. Clause 17 provides that in course of partnership, with regards to the management, supervision, or in any other issue, if any dispute arises by and between the partners, the partners shall settle the dispute through their appointed/nominated arbitrator. In case of failure to settle such dispute, the partner shall be at liberty to "take shelter in the Court".

In view of the above discussions, the petitioners can be said to have made out a prima facie case that the petitioners have automatically become partners of the firm as heirs of their deceased predecessor-in-interest, although such question is required to be conclusively decided only by the appointed arbitrator, when the matter is referred to arbitration.

Hence, AP/228/2023 is allowed, thereby appointing Mr. Tanmoy Mukherjee (Mob: 9874218610), an Advocate practising in this Court, as the sole arbitrator to resolve the disputes between the parties, subject to obtaining his

declaration/consent under Section 12 of the Arbitration and Conciliation Act, 1996.

(SABYASACHI BHATTACHARYYA, J.)

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