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

AP/279/2023

SHYAMAL ROY AND ORS
VS
SUBHODEEP ROY

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 17th May, 2023

Appearance:
Mr. Nirmalya Dasgupta, Adv.
Mr. R. L. Mitra, Adv.
Ms. Priyanka Dhar, Adv.
...for the petitioners

The Court:- Affidavit of service filed in Court today be taken on record. It transpires from the affidavit of service that proper service has already been effected on the respondent. However, despite such service, the respondent chooses not to appear, for which the application is taken up ex parte in the absence of the respondent.

Learned counsel for the petitioners places reliance on Clause 17 of a partnership deed between the parties dated December 12, 2005, within the purview of which the present dispute has arisen between the parties. In his usual fairness, learned counsel also points out that there was a subsequent reconstituted deed of partnership dated April 1, 2021 on which the respondent would probably seek to rely.

However, even thereafter, the partnership firm issued several communications to Bharat Petroleum Corporation Limited, in which the respondent herein was also a signatory, indicating that the partnership firm was still in the process of finalization and registration of the reconstituted partnership deed of the concern.

As such, since it is evident from the communications dated April 6, 2021 and July 12, 2021, apart from those other documents which have been annexed to the present application, that the partnership firm itself, including the respondent, had taken such stand even after the alleged execution of the purported reconstituted deed of partnership, there is an arguable dispute between the parties as to whether the arbitration clause in the prior partnership deed dated December 12, 2005 subsists till date.

Since such question is arguable and hence beyond the domain of the Court sitting under Section 11 of the Arbitration and Conciliation Act, 1996, the matter ought to be referred to arbitration, keeping alive the question of maintainability of such proceeding.

Accordingly, AP/ 279/2023 is allowed, thereby appointing Mr. Amitesh Banerjee (Mobile No. 9830173356), Senior Advocate, 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.

It is made clear that the issue of maintainability of the proceeding as well as all other questions between the parties are kept open for being decided by the arbitrator.

(SABYASACHI BHATTACHARYYA, J.)

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