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

AP/321/2023

SANKAR GHOSH
VS
SRI SUBHASH ROY AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 19th May, 2023

Appearance:
Mr. S. R. Saha, Adv.
...for the petitioner

Mr. D. Ray, Adv.
Ms. S. Mukhopadhyay, Adv.
Mr. S. Mukhopadhyay, Adv.
...for the respondent

The Court:- The petitioner contends that a dispute has arisen between the parties, being the petitioner and the two respondents, within the contemplation of Clause 21 of the partnership deed between the parties.

It is contended that despite service of notice under Section 21 of the Arbitration and Conciliation Act, 1996, the respondents chose not to respond to the same.

Learned counsel appearing for the respondents takes certain objections to the prayer for reference.

First, it is argued that Clause 21, which is the purported arbitration clause, refers to the appointment of two arbitrators, individually by “both the parties”. However, it is seen from the partnership deed itself that the number of

partners were three. As such, it is submitted that the arbitration clause itself is invalid and cannot lead to a reference to arbitration.

That apart, learned counsel for the respondents submits that respondent no. 2 was never a party to the deed and, as such, cannot be embroiled as a party to the arbitration.

Thirdly, it is argued that although in paragraph no. 7 of the application, the petitioner has categorically stated that both notices served upon the respondents were returned with postal remark 'refused', it is seen from the track reports annexed to the application that those speak otherwise. As such, there is a cloud regarding service of notice on the respondents as well.

Considered the submissions of learned counsel.

Inasmuch as the first objection is concerned, Clause 21 is otherwise valid and clearly reflects the intention of the parties to the partnership deed to refer the dispute, if any, to arbitration. The discrepancy sought to be portrayed by the respondents might have been relevant in the event there was a tripartite dispute between three parties. However, since the number of petitioners is one in the present case whereas two of the other parties are arrayed as respondents, it is evident that the dispute, as sought to be referred, is between two parties - one partner of the one side and two on the other. Thus, the reference to "both parties" does not vitiate the arbitration clause.

Insofar as respondent no. 2 is concerned, learned counsel for the petitioner has relied on the scope of the partnership deed to argue that on the demise of the predecessor-in-interest of the respondent no. 2, she automatically became a partner. As such, since such claim, if any, of the respondent no. 2 is

only through her deceased predecessor-in-interest, she is also bound by the arbitration clause in the agreement, and hence a necessary party to the present application and the arbitral proceeding.

Insofar as the discrepancy of service is concerned, it is seen from the records that the notices of invocation under Section 21 of the 1996 Act, which is the most germane consideration in the present proceeding, were individually served on each of the respondents. As such, minor anomalies in pleadings regarding previous service, if any, do not vitiate the entire reference to arbitration.

In fact, the dispute arisen between the parties falls within this scope of Clause 21 of the partnership deed and, as such, the otherwise arbitrable dispute is referable to arbitration.

Hence, AP/321/2023 is allowed, thereby appointing Justice Prasenjit Mandal (Mobile No. 9836268266), a former Judge of 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.)