

OD-7

ORDER SHEET

AP/394/2023

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

AUROMA PROJECTS PVT. LTD.
Versus
SHRI DINESH KUMAR SINHA

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 26th July, 2023.

Appearance:

Mr. Sarvapriya Mukherjee, Adv.

Mr. Sourodip Banerjee, Adv.

Ms. Sanchita Barman Ray, Adv.

...for the petitioner

Ms. Nilofer Siddique Alam, Adv.

Mr. Sk. Mehbub Hossain, Adv.

...for the respondent

The Court:- At least two of the orders in the file show that adjournment had been taken on behalf of the respondent on 6th July, 2023 and 19th July, 2023. The Court had adjourned the matter on the other two occasions for the respondent to be present. The order dated 19th July, 2023 also reflects that one Mr. Hossain had sought for an adjournment on the ground that the Vakalatnama will be filed for the respondent.

Today when the matter is taken up, Ms. Alam, Advocate for the respondent who is present in Court submits that she has not received any

instructions from the respondent. This Court hence proceed to decide this matter.

The agreement between the parties is in the nature of a development agreement executed on 18th May, 2023. This agreement contains an arbitration clause. At clause 59 of the said agreement, the parties gave the option to themselves to refer the dispute to the sole Arbitrator failing which they would appoint a panel of three Arbitrators.

The petitioner claims, through learned counsel, to have started the development work in terms of the agreement for a residential project on the land belonging to the respondent from 2013 onwards. The agreement describes the respondent as the “owner/landlord” and the petitioner as the “developer”.

The dispute is with regard to the respondent terminating the agreement on 23rd December, 2021 but the petitioner continuing to work in terms of the agreement for sometime thereafter until the respondent pasted a notice outside the site in August, 2022. The petitioner, thereafter, filed an application for interim relief under Section 9 of the 1996 Act and a Co-ordinate Bench passed an order on 16th January, 2023 giving interim relief to the petitioner by staying the notices of stop work. The petitioner, thereafter, invoked the arbitration clause by way of a notice under Section 21 of the Act dated 4th May, 2023 and the respondent replied to the notice on 6th May, 2023. The respondent did not deny the arbitration clause but disputed the petitioner’s contention on the ground that the agreement had been terminated on 23rd December, 2021.

There is evidence of clear dispute between the parties and the agreement governing the commercial transactions between the parties containing an arbitration clause. There is hence little doubt that the parties would fall under Section 11(6)(a) of the 1996 Act.

The respondent has refused to take steps for being represented in this matter despite being given several opportunities to do so. Hence, the Court has proceeded to decide the matter.

AP/394/2023 is accordingly disposed of by appointing Ms. Indira Banerjee, former Judge of this Court and the Supreme Court (Mob : 9560808777) to act as an Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his/her consent in the prescribed form to the Registrar, Original Side within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 28th July, 2023 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)