

ORDER SHEET

AP/400/2023

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

PAROMITA KUNDU
Versus
SRI KALYAN DEY AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 7th August, 2023.

Appearance:

Mr. Amrita Lal Dhar, Adv.
Mr .Aniruddha Sarkar, Adv.
Ms. Piyali Pal Roy, Adv.
Ms. Reema Coomar, Adv.
Ms. Trisani Dey, Adv.
...for the petitioner

Mr. Souvick Mitra, Adv.
...for the respondents

The Court: This is the fourth time that the matter is appearing but learned counsel appearing for the parties are woefully unprepared.

Upon the submissions made on behalf of the parties, there is little doubt that there is a dispute between the parties. The dispute relates to the refusal of the surviving partner of the partnership firm to induct the petitioner into the partnership. The petitioner is the surviving daughter and the legal heir of one of the partners who died on 5th May, 2021. The petitioner claims that the

petitioner was kept out of the partnership and further that the initial partnership deed of 14th July, 1992 was changed by a supplementary deed of 3rd April, 2018 where the share of the individual partners of 50% was unilaterally reduced to 33% and an outsider was inducted as a partner.

The petitioner relies on Clause 16 of the original partnership deed to say that upon the death or retirement of any partner, the partnership will not stand dissolved and the legal heir of the retiring/deceased partner would be inducted into the partnership. The partnership deed contained an arbitration clause where the parties would resolve their differences under the provisions of The Indian Arbitration Act, 1940. The supplementary deed of 3rd April, 2018 does not contain an arbitration clause and further makes it clear that all the other clauses of the initial partnership deed would remain unchanged. The petitioner invoked the arbitration clause by a letter dated 17th February, 2023.

Learned counsel appearing for the respondents does not disagree that there is a dispute between the parties and further says that the petitioner has instituted criminal proceedings against the respondents for forgery of the petitioner's deceased father. Counsel further submits that the petitioner has not disclosed the reply of the respondents to the notice of the petitioner invoking the arbitration clause wherein the respondents have stated that the petitioner will be inducted as a partner in the partnership.

As facts stand from the material disclosed before the Court and the submissions made by counsel, there is no doubt that there is an existing dispute between the parties. The original partnership deed also contains an

arbitration cause albeit under the 1940 Act. Since the initial deed is of 1992 and the present Act came into force from 1996 onwards, the parties will be governed by the provisions of the 1996 Act. The present application has been filed under Section 11 of the 1996 Act.

AP/400/2023 is allowed and disposed of by appointing Mr. Subrata Talukdar, former Judge of this Court to act as the learned Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his/her consent in the prescribed format under the 1996 Act read with the Schedules to the learned Registrar, Original Side within three weeks from date.

The advocate-on-record of the petitioner shall communicate this order on the learned Arbitrator by 9th August, 2023 with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)