

ORDER

OD-7

AP/537/2021
IA NO.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

INFINITY INFOTECH PARKS LIMITED
VERSUS
MAZARS BUSINESS ADVISORS PVT. LTD.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 2ND FEBRUARY, 2023

APPEARANCE:
Mr. Samrat Sen, Sr. Advocate
Ms. Amrita Pandey, Advocate
Ms. Anamika Pandey, Advocate
Mr. Ghanshyam Pandey, Advocate
Ms. Sneha Singh, Advocate
....for the applicant in GA
and Respondent in AP
Mr. Reetobroto Mitra, Advocate
Mr. Pradip Kumar Sarawagi, Advocate
...for the respondent in GA
and Petitioner in AP

The Court:- GA/1/2022 has been filed by the respondent in AP/537/2021 seeking recall of the order dated 19th January, 2022 passed in AP/537/2022.

By the order dated 19th January, 2022, this Court had considered the application under Section 11 of the Arbitration and Conciliation Act, 1996 and after examining the matter, Court had allowed the prayer for appointment of the sole arbitrator to resolve the disputes between the parties and had proposed the name of Justice Tapan Kumar Dutt, retired Judge of this Court, as sole arbitrator subject to obtaining his declaration in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act by the Registrar, Original Side of this Court.

Learned counsel for the applicant pressing the application for recall of the order has submitted that the notice of the AP was served upon the respondent during the COVID pandemic period when the respondent was working virtually and was not aware of the filing of the AP and, therefore, could not appear. He further submits that this application for recall in such

circumstances will be maintainable in view of Full Bench decision of this Court reported in CWN 1904-05 Vol 9 page 81. He has also submitted that the applicant in the AP had appeared before the Arbitrator nominated by the respondent and had raised objection in terms of Section 16 of the Act. Therefore, pending the said objection, he could not approach this Court.

Learned counsel for the applicant has submitted that in the AP, the respondent was duly served and the plea taken in the application for recall is incorrect because in the arbitration proceeding before the arbitrator nominated by the respondent, their counsel was appearing on the relevant dates and since their nominated arbitrator was proceeding with the matter, therefore, the respondent deliberately did not appear in the AP before this Court.

Having heard the learned counsel for the parties in GA/1/2022, it is noticed that in the AP, respondent was served thrice, firstly, on 20th December, 2021 and for the second time on 30th December, 2021 and thereafter on 3rd January, 2022. The proof of service was placed on record by the applicant along with the affidavits of service dated 17th January, 2022 and 23rd December, 2021. When in spite of service of notice, no one had appeared on behalf of the respondent this Court had proceed with the matter and passed the order dated 19th January, 2022. It is a undisputed fact that the notice was duly served upon the officer of the respondent. The plea taken that officer in the office had not informed the respondent who was working virtually relates to the fault of the office of the respondent. Even requisite details in this regard have not been placed on record as to who was responsible for informing the respondent about the notice after its receipt. That apart, the learned counsel for the applicant has pointed out that even during the COVID pandemic period, on 4th May, 2021, notice was sent by the respondent to the applicant and the reply thereof was also sent by the applicant on 13th May, 2021, receipt of which has not been disputed. This shows that respondent was functioning even during the COVID period. Learned counsel for the applicant has further referred to the proceedings which took place before the arbitrator appointed by

the respondent on 18.12.2022 and 12.2.2022 which were during the same period when the matter was taken up by this Court and has pointed out that before the arbitrator, learned counsel for the respondent was appearing. That apart, it is also noticed that the respondent is not disputing the arbitration clause or existence of the disputes between the parties.

Hence, in the aforesaid circumstances of the case, I am of the opinion that no case for recall of the order dated 19th January, 2022 passed in AP/537/2021 is made out as the said order was passed after due service, that too, thrice upon the respondent.

Hence, GA/1/2022 is rejected.

The proposed arbitrator has sent the letter of consent dated 12.2.2022 to the Registrar, Original Side. Hence, AP/537/2022 is allowed and Justice Tapan Kumar Dutt, retired Judge of this Court is appointed as sole arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)