

AP/585/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONSANMARG DEVELOPERS LIMITED
VERSUS
MUKESH KUMAR AGARWAL & ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 19th January, 2023APPEARANCE:
Mr. Aniruddha Mitra, Advocate
Mr. Varun Kothari, Advocate
Mr. Subhankar Chakraborty, Advocate
Mr. Saptarshi Bhattacharjee, Advocate
Ms. Sristi Paul, Advocate
...for the petitioner

The Court:- Learned advocate for the applicant has filed affidavit of service indicating that the respondent nos.3 and 4 are also served by way of publication.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the sale agreement dated 30th March, 2011 was executed between the parties which contained the clause no.27 as arbitration clause and since the dispute had arisen, therefore, the applicant had served the notice dated 29th July, 2011 upon the respondents in terms of Section 21 of the Act and thereafter had filed AP/335/2012 for appointment of the arbitrator. He has further pointed out that AP/335/2012 was allowed by this Court by order dated 19th July, 2012 appointing Pradip Kumar Biswas, retired Judge of this Court, as Arbitrator. Learned counsel for the applicant has further submitted that the agreement was between Pooja Residency Private Limited and Sri Mukesh Kumar Agarwal. He submits that name of Pooja Residency Private Limited has now been changed to Sanmarg Developers Limited which is the applicant herein and that subsequently Mukesh Kumar Agarwal had created third party right in favour of

the respondent nos.2 to 4. Therefore, the said respondents have been impleaded because the agreement itself binds heirs, executor, administrators, successors, and legal representatives and/or assigns. He has submitted that Justice Pradip Kumar Biswas expired in August, 2020 and in this regard he has referred to paragraph 33 of the AP.

Though the respondents were served but they have not appeared before this Court today and have not chosen to oppose the present application.

Hence, on the basis of uncontested submission, I am of the opinion that a case for appointment of the sole/substitute Arbitrator is made out. Accordingly, the AP is allowed. Justice Ranjit Kumar Bag, retired Hon'ble Judge of this Court is appointed as Arbitrator to resolve the disputes between the parties, subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court, within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side, forthwith.

(PRAKASH SHRIVASTAVA, C.J.)