

OD-4

ORDER SHEET

AP/665/2023

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

SOVANA CHATTERJEE
Versus
JAYA ROY

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 11th October, 2023.

Appearance:

Mr. Pramit Kr. Ray, Sr. Adv.

Mr. Shaunak Ghosh, Adv.

Mr. Rajib Mullick, Adv.

Ms. Ayantika Saha, Adv.

...for the petitioner

Mr. Debjyoti Basu, Adv.

Mr. Nitin Kr. Das, Adv.

...for the respondent

The Court: The facts in the present application for appointment of an Arbitrator arise out of a Leave and Licence Agreement dated 1st June, 2014. The Agreement contains an arbitration clause. The petitioner before the Court is the licensor and the respondent is the licensee in the Agreement and the Agreement was for a duration of 11 months. The respondent, as the licensee, was to occupy the premises on a temporary basis. The parties agreed that the respondent would return the possession of the premises to the petitioner on 30th April, 2015.

The petitioner sought to recover possession by way of a letter dated 14th September, 2020 and thereafter filed a suit for eviction in the learned City Civil Court in September, 2022. The respondent made an application in February, 2023 under Sections 5 and 8 of the 1996 Act for reference of the disputes to arbitration. The petitioner's suit was subsequently dismissed for non-prosecution.

The Section 21 Notice in the present case was issued by the petitioner on 20th June, 2023 and the respondent wrote back on 26th July, 2023 saying that the dispute is non-arbitrable as it involves a landlord-tenant dispute.

Apart from the arbitrability of a dispute between a landlord and a tenant being settled by the Three-Judge Bench of the Supreme Court in *Vidya Drolia and Others vs. Durga Trading Corporation (2021) 2 SCC 1*, the respondent has herself resiled from her initial position of the dispute being an arbitrable dispute to the dispute not being arbitrable. The respondent changed her position with regard to the nature of the Agreement which can be found in the respondent's application for reference of the disputes to arbitration where the Agreement was described as a Leave and Licence Agreement. However, in her letter of 26th July, 2023 the respondent says that the dispute is non-arbitrable and must be adjudicated by a special forum.

Whether the Agreement is in the nature of a Leave and Licence or a tenancy can very well be decided by the Arbitrator. What is clear is that there is, indeed, a dispute between the parties and one that is relatable to the

Agreement dated 1st June, 2014. The respondent's stand saying that the dispute is not arbitrable adds to the dispute.

The parties, hence, fall within both sub-sections (5) as well as (6) of Section 11 of the 1996 Act. AP/665/2023 is, accordingly, allowed and disposed of by appointing Ms. Arunima Lala, counsel to act as the Arbitrator subject to the learned Arbitrator communicating her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 14th October, 2023 along with the requisite details of the contact person of the petitioner.

Learned counsel appearing for the respondent seeks to take the nature of the Agreement as a preliminary point before the learned Arbitrator. The Court sees no impediment in allowing the prayer and in any event, the respondent does not require leave of the Court to proceed in the matter.

(MOUSHUMI BHATTACHARYA, J.)