

OCD-12

ORDER SHEET

AP/685/2023

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

MAHENDRA SHIVLAL GANDHI AND ANR.
VS
TUSHAR JAWAHARLAL GANDHI AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 25th September, 2023.

Appearance:

Mr. Jaydip Kar, Sr. Adv.

Mr. S. Ghosh, Adv.

...for the petitioners

The Court: The affidavit of service shows that the respondents were served both in their Calcutta as well as the Kharagpur offices on 20th September, 2023. The respondents are, however, not represented.

The dispute brought to the Court, as argued by learned counsel appearing for the petitioners, relates to a reconstituted deed of partnership dated 1st April, 2019 between four partners, two of who are the petitioners and the remaining two the respondents.

The partnership firm carries on the business of a petrol pump as well as of liquor.

The dispute relates to access and resolution of the accounts of the partnership.

The reconstituted partnership deed contains an arbitration clause at Clause 15.

Apart from the submissions made on behalf of the petitioners, the dispute would be evident from a letter written by the petitioners to the remaining two partners/respondents on 22nd June, 2023 outlining the disputes and differences which have arisen between the parties and giving two options whereby either the petitioners will resign as partners and transfer their respective shares in the business to the respondents or the respondents will resign and do likewise under option (ii).

The respondents did not reply to this letter and the petitioners invoked the arbitration clause under Section 21 of the 1996 Act on 26th July, 2023. The respondents did not reply to this letter.

The dispute between the petitioners and the respondents is plain to see and is well-reflected in the letter dated 22nd June, 2023.

Although the respondents have remained silent, that would not translate to the respondents agreeing to the terms of the aforesaid letter. The parties would hence fall both under Sections 11(5) as well as (6) of the 1996 Act.

It should be stated at this stage that the Supreme Court in *Umesh Goel vs. Himachal Pradesh Co-operative Group Housing Society Limited*, reported in (2016) 11 SCC 313 held that Section 69 of the Partnership Act, 1932 will not be a bar to arbitral proceedings including the arbitrator award. This decision

was followed by a co-ordinate Bench in *Md. Wasim & Anr. vs. Bengal Refrigeration & Co. and Ors.*, reported in AIR 2022 Cal 382.

AP/685/2023 is accordingly allowed and disposed of by appointing Ms. Mukta Gupta, former Judge of the Delhi High Court 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 27th September, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.