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

AP/713/2023

KRISHNA AVAAS PRIVATE LIMITED
VS
GOPAL TIWARI AND ANR

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 11th October, 2023.

Appearance:

Mr. Prantik Garai, Adv.
Ms. Antara Biswas, Adv.
Ms. Ankita Singh, Adv.
...for the petitioner

Mr. Rachit Lakhmani, Adv.
Mr. Lokesh Sharma, Adv.
...for the respondent no. 1

Mr. Gourab Kr. Das, Adv.
...for the respondent no. 2

The Court:- This is an application for appointment of an Arbitrator under Section 11 of the 1996 Act. The Agreement in question is a Development Agreement of 31st March, 2015 where all the three parties before the Court were also parties. The petitioner was the tenant, the first respondent was the Developer and the second respondent (significantly named R.J "Hamas") was the lessee of a Trust. These facts would be evident from the Development Agreement. The Development Agreement contains an arbitration clause at Clause 27. The dispute relates to Clauses 8, 9, 10 and 11 of the Development Agreement under which the Confirming Party which is the respondent no. 2 or the Developer which is the respondent no. 1 was to deliver the possession to

the petitioner of an allotted portion within 24 months failing which the Developer/respondent no. 1 would be liable to pay compensation to the petitioner (tenant) at the rate indicated in Clause 9 of the Agreement. Clause 11 outlines a further obligation on the part of the Confirming Party/respondent no. 2 to renew the period of lease and execute a registered sub-lease in favour of the petitioner within the allotted portion for a period of 99 years. The petitioner complains that none of the respondents took action in executing and/or registering a fresh lease in terms of Clause 11 and put the obligation on the respondents relying on Clause 9 of the Development Agreement. Clause 9 does not specify which party is to shoulder the responsibility of the execution of the sub-lease. The dispute pertains to the alleged failure on the part of the respondents to comply with these clauses of the Agreement.

The petitioner invoked the arbitration clause by a notice under Section 21 of the 1996 Act on 1st July, 2023. Both the respondents replied individually on 21st July, 2023 and on 17th July, 2023 disputing the contentions of the petitioner and expressing their disinclination to go to arbitration. Even though a plea of limitation has been taken on behalf of the second respondent, the Court has been given to understand that the petitioner was put in possession of the premises only in 2019. Clause 9 of the Agreement provides for certain obligations after 24 months which would begin on and from 2021. This matter is not one where the Court can take the view that the claimants are *ex facie* barred by the laws of limitation or that such issue cannot be decided by an Arbitrator.

On the other hand, this is a fit case where the dispute would also be evident from the replies given by the respondents to the petitioner's invocation notice. The disputes are hence required to be resolved in terms of the arbitration clause embedded in the Development Agreement.

AP/713/2023 is accordingly allowed and disposed of by appointing Mr. Ovik Sengupta, counsel to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 14th October, 2023 along with the relevant details of the contact person.

Considering the plea of the first respondent that the first respondent is not inclined to bear the "refreshments" expenses of arbitration, the learned Arbitrator shall be at liberty of considering whether the sittings can be held virtually.

(MOUSHUMI BHATTACHARYA, J.)