

OCD-2

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

AP/746/2023

SHEILA SEN AND ANOTHER
VS
FORT PROJECTS PVT LTD AND OTHERS

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 16th November, 2023.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Soumyadeb Sinha, Adv.

Mr. Rohan Raj, Adv.

Mr. Ritoban Sarkar, Adv.

Mr. Abhishek Roy, Adv.

...for the petitioners

Ms. Manju Agarwal, Adv.

...for the respondent no. 1

Mr. Debanik Banerjee, Adv.

Mr. Steven S. Biswas, Adv.

...for the respondent nos. 2 & 3

The Court:- The parties before the Court represent three of the owners of a property which was to be developed by the respondent no.1. The work to be done by the respondent no.1 was outlined in a Development Agreement dated 15th December, 2012. There were three parties to the Development Agreement, namely, one Bobby Sen, who passed away after execution of the Development Agreement, the respondent no.1, Namita Roy, the mother of the petitioner no.1 and the respondent no.3.

It appears from the submissions made on behalf of the parties that while the petitioners do not seek to execute the Development Agreement, the respondent nos.2 and 3 want to proceed with the Agreement.

It also appears that there is a dispute in this regard between the petitioners (the mother and sister of Bobby Sen, respectively) and the respondent nos.2 and 3 who are related to and is the daughter of Namita Roy who was the confirming party to the Development Agreement.

The materials disclosed to the Court show that the petitioners cancelled the Development Agreement by a notice dated 2nd April, 2023 which also doubled up as a notice under Section 21 of the 1996 Act for appointment of Arbitrator. The respondent no.1 replied to this notice on 4th May, 2023 denying the contentions of the petitioners and also disputing the petitioners' choice of Arbitrator.

There are two other notices under Section 21 of the 1996 Act written by the petitioners to the respondent nos.2 and 3 respectively.

Even though the respondent no.1, being the developer, says that the parties do not have any dispute between them, the very fact that the petitioners representing 2/3rd of the co-owners have terminated the Development Agreement while the other co-owners are willing to go ahead with the Development Agreement, shows that a dispute exists between the parties. The dispute, in essence, is whether the petitioners fulfilled their part of the contractual obligations and whether the developer/respondent no.1 converted the property for the personal use of one of the directors of the respondent no.1

This Court is therefore not inclined to accept that there is no dispute existing between the parties or that the present application filed under Section 11 should not succeed on that account. The dispute is also directly relatable to Clause 17 of the Development Agreement which is wide enough also to cover the dispute between the co-owners of the property.

AP/746/2023 is allowed and disposed of by appointing Indira Banerjee, former Judge of the Supreme 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 petitioners' advocate-on-record shall communicate this order on the learned Arbitrator by 20th November, 2023 along with the requisite details of the contact person of the petitioners.

(MOUSHUMI BHATTACHARYA, J.)