

OD-4

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

AP/766/2023

KIRAN PATRA AND ANR.
VS
RATNA DEY AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 1st December, 2023.

Appearance:

Mr. Ayan Banerjee, Adv.

Mr. Arijit Bhowmick, Adv.

Ms. Pooja Agarwal, Adv.

...for the petitioners

Mr. Biplab Ranjan Bose, Adv.

Mr. Ashirbad Sarkar, Adv.

...for the respondents

The Court:- This is an application for appointment of a substitute Arbitrator under Section 15 of The Arbitration and Conciliation Act, 1996.

The arbitration agreement is contained in an Agreement for Development dated 28th November, 2014.

The need for appointment arises out of a letter dated 21st September, 2023 by which the learned Arbitrator, who was appointed by an order of a co-ordinate Bench on 22nd March, 2021, recused himself from the arbitration. From a perusal of this letter, the reason for recusal appears to be a letter written by the respondents (respondents also in the arbitration) raising

concerns over the “overwhelming enthusiasm and hot haste” with which the arbitral proceedings were conducted by the learned Arbitrator.

The petitioners have placed an order passed by this Court on 30th August, 2023 in an application for extension of the Arbitrator’s mandate. The Court allowed the application and extended the mandate for six months from 31st August, 2023. The Court is informed that the respondents have filed a Special Leave Petition from this order but it appears from the submissions of the learned counsel appearing for the respondents that the respondents do not have any knowledge as to the status of the said SLP.

The respondents take an objection on the maintainability of this application on the ground that the parties have an ongoing dispute with regard to the same subject-matter before the Consumer Disputes Redressal Forum. Counsel appearing for the respondents relies on a Supreme Court decision in support of the objection.

The fact that disputes existed between the parties and an Arbitrator was accordingly appointed by a co-ordinate Bench is evident since the arbitration commenced from 26th July, 2021. Hence, the existence of a dispute or the relatability of the same to the arbitration agreement is not being repeated at this stage. It is admitted that arbitration continued between the parties from 26th July, 2021 till the Arbitrator recused himself from the proceedings on 21st September, 2023. The respondent’s conduct at a belated stage shows the ulterior motive of the respondent to stall the arbitration.

The objection with regard to ongoing disputes between the parties in the Consumer Disputes Redressal Forum does not assist the respondents. *Emaar MGF Land Limited vs. Aftab Singh*, (2019)12 SCC 751, at paragraphs 29 and 30 of the Report makes it clear that the Consumer Protection Act is a special statute with special remedies and that the Arbitration Act will not come in the way of parties proceeding with their disputes before the Consumer Disputes Redressal Forum. The decision is not an authority for the proposition that consumer-related disputes would be a bar to institution of arbitration. *Emaar MGF*, in fact, makes it clear that the legislative object of the Consumer Protection Act is entirely different from that of The Arbitration and Conciliation Act, 1996.

The pendency of the Special Leave Petition will also not act as an embargo for appointment of the Arbitrator since the SLP is from an order wherein the Court was of the view that the respondents had given their implied consent under Section 29-A(3) of the 1996 Act. The petitioners seek appointment of a new Arbitrator in the present case. A new chapter will begin with the present appointment.

AP/766/2023 is allowed and disposed of by appointing Mr. Om Narayan Rai, counsel to act as the Arbitrator subject to the learned Arbitrator communicating his 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 3rd December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.