

OCD-13 & 21

ORDER SHEET

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

AP/768/2023

MOTILAL MADHOGARHIA
Versus
WELLINGTON HARDWARE STORES AND ORS.

AND

IA NO. GA/1/2023
In
RVWO/47/2023

MOUMITA BERA GHOSH
Versus
WELLINGTON HARDWARE STORES AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 18th October, 2023.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Ratul Das, Adv.

Ms. Ankita Upadhyay Agarwal, Adv.

Mr. Chunky Agarwal, Adv.

Mr. Niladri Sekhar Ghosh, Adv.

Ms. Sompurna Chatterjee, Adv.

Mr. Sourav Mondal, Adv.

Ms. Laboni Sikder, Adv.

Mr. Mainak Ghosal, Adv.

Mr. Meghnad Dutta, Adv.

Mr. R. Upadhyay, Adv.

Mr. A. Shaw, Adv.

Mr. Bidhayak Lahiri, Adv.

Ms. Bhaswati Lahiri, Adv.

Re. : IA NO. GA/1/2023
In
RVWO/47/2023

The review is against an order passed by this Court on 12th June, 2023 in an application under Section 11 of the 1996 Act filed by one of the surviving heirs of a deceased partner in a partnership firm. The respondents were the legal heirs of other deceased partners as well as the surviving partner. The arbitration petition was disposed of by appointing a retired Judge of this Court to act as the sole Arbitrator in terms of Clause 24 of the partnership deed which formed the subject matter of the dispute.

The review is on the ground that the petitioner who is now before this Court and is the claimant in the arbitration subsequently found out that the mother of the respondent nos. 7 and 8 (in this application) who is the widow of one of the deceased partners was not made a party to AP/350/2023. Learned counsel appearing for the petitioner in AP/768/2023 submits that the arbitration may result in an imperfect award if the widow of one of the deceased partners is not a party before the learned Arbitrator since all the legal heirs of the two deceased partners are before the learned Arbitrator. Counsel accordingly seeks review of the order passed by this Court on 12th June, 2023 so that the mother may be made a party to the arbitration.

RVWO/47/2023 along with all connected applications are disposed of.

Re. : AP/768/2023

This is an arbitration petition for appointment of an Arbitrator under Section 11 of the 1996 Act. The petitioner before the Court was the second respondent in AP/350/2023. The respondent no. 7 in the present petition was the petitioner in AP/350/2023 while the respondent no. 8 was the respondent no. 7 in AP/350/2023.

The petitioner seeks appointment of an Arbitrator on the ground that the arbitration which commenced pursuant to the order dated 12th June, 2023 passed in AP/350/2023 may start anew with the mother of the respondent no. 7 and 8 being made a party to the proceedings. The mother of the respondent nos. 7 and 8 is the respondent no. 6 in the present application.

Learned counsel appearing for the respondents in the present application objects to any orders being passed for appointment of an Arbitrator, and the objection is based on the mother of the respondent nos. 7 and 8 having relinquished her right to any share in the partnership. This Court is of the firm view that this objection will be a matter for consideration in the arbitration and be subject to orders passed by the learned Arbitrator.

Upon hearing counsel appearing for the parties and on the admitted fact of respondent no. 6 not being a party in AP/350/2023, the order dated 12th June, 2023 in AP/350/2023 is recalled.

Since the disputes between the parties with regard to the deed of partnership remain, the underpinnings of an order under Section 11 remains. The disputes are required to be resolved by an Arbitrator.

AP/768/2023 is accordingly allowed and disposed of by appointing Mr. Soumitra Pal, former Judge of this Court to act as the learned Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format under the Act and the schedules thereto within a period of three weeks from date. This order is to be communicated to the learned Arbitrator by tomorrow.

The learned Arbitrator will be at liberty to decide the order of proceedings including the pleadings filed by the parties before the learned Arbitrator taking into account the respondent no. 6 now being a party in the arbitration.

(MOUSHUMI BHATTACHARYA, J.)

sg.