

OD-17

ORDER SHEET

AP/791/2023

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

YASMIN KHALIQUE AND ORS.
VS
MUKHTAR ALAM

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th December, 2023.

Appearance:

Mr. Ahin Choudhury, Sr. Adv.

Mr. Sohail Haque, Adv.

Mr. M.I.A. Lodhi, Adv.

Mr. Ishaan Saha, Adv.

Mr. Tarique Quasimuddin, Adv.

Ms. Zainab Tahir, Adv.

The Court: This is a belated application for appointment of a substitute Arbitrator considering the fact that the learned erstwhile Arbitrator passed away in July, 2022. The present application has been filed on 18th October, 2023.

Learned counsel appearing for the petitioner seeks to explain the delay on the ground of the proceedings subsequent to an interim award passed by the learned erstwhile Arbitrator.

The first of such proceedings is an application filed by the petitioner for setting aside of the interim award dated 12th November, 2020. The Court dismissed the application by a judgment delivered on 25th March, 2021. The

petitioner challenged the said judgment and the Division Bench disposed of the appeal on 10th August, 2023. The petitioner sought for clarification of the judgment of the Division Bench and the Division Bench disposed of the said application on 12th September, 2023 with the observation that there was no need for clarification. The petitioner thereafter preferred a Special Leave Petition before the Supreme Court from the Division Bench judgment and the Supreme Court dismissed the Special Leave Petition on 1st December, 2023.

These grounds for explaining the intervening delay lack credibility. The only document shown in this regard is an order of 8th August, 2021 whereby the learned Arbitrator was pleased to cancel the next meeting until further notice.

Besides, the Division Bench in its order dated 10th August, 2023 made it clear that the arbitration shall proceed in accordance with law until the final award is pronounced and published. The petitioner did not take any steps even after this direction for constitution of the Tribunal.

However, considering the larger interest of the parties who were before the erstwhile learned Arbitrator until passing of the interim award dated 12th November, 2020, it would be in the best interest of all to constitute an Arbitral Tribunal and ensure that the arbitration commences as expeditiously as possible after a gap of more than two years.

AP/791/2023 is accordingly allowed and disposed of by appointing Mr. Siddhartha Mitra, Senior Counsel to act as the new Arbitrator in place and stead of the erstwhile learned 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 15th December, 2023 along with the requisite details of the contact person of the petitioner.

The petitioner shall pay costs of Rs. 20,000/- to A Village for Independent and Enterprising Women, West Bengal within seven days from date for the unexplained delay in filing of the present application.

Since learned counsel appearing for the respondent has pointed out several errors in the pleadings, it is made clear that the Court has not gone into the merits of the dispute in any form.

Without affidavits, the allegations contained in the application are deemed not to have been admitted.

(MOUSHUMI BHATTACHARYA, J.)