

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

AP/767/2022

PARAMSUKH NIRMAL PVT. LTD.
VERSUS
SWAPNA ROY AND ORS.

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

Date: 5th January 2023.

APPEARANCE:

Mr. Swatarup Banerjee, Advocate
Mr. Falguni Bandyopadhyay, Advocate
Mr. Pratik Mukherjee, Advocate
Ms. Sreetama Neogi, Advocate
Ms. Riya Ballav, Advocate
... for applicant.

Ms. Ananya Sinha, Advocate
Mr. Sattik Raut, Advocate
... for respondent no.4.

The Court:- Affidavit of service filed by the applicant is taken on record.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the arbitrator to resolve the disputes between the parties.

Learned counsel for the applicant has pointed out that the sale agreement dated 23rd June 1994 was executed between the parties which contained the following arbitration clause:-

“37. Any dispute or difference between the parties arising out of meaning, construction or import of this Agreement or their rights and liabilities hereunder shall be adjudicated by reference to the arbitration of two independent arbitrators, one to be appointed by each party who shall appoint an Umpire at the commencement of the reference and the award of the arbitrators or Umpire shall be final and conclusive on the subject as between the parties and this clause shall be deemed to be as submission within the meaning of Arbitration Act (Act X of 1940) and its statutory modification or enactment thereof in force from time to time.”

He has further submitted that since the dispute had earlier arisen, therefore, applicant had initially served the notice under Section 21 of the Act and thereafter had filed A.P. No.34 of 2004 which was dismissed in default. He further submits that thereafter, the respondents entered into fresh development agreement with the third parties. Therefore, the applicant had given the notice dated 18.07.2022 to the respondents in terms of Section 21 of the Act proposing the name of the arbitrator to be appointed by the applicant and requesting for nominating the respondents' arbitrator. The respondent no.4 had sent reply dated 30th August 2022 raising several objections. Thereafter, the applicant had sent the communication dated 21.09.2022 once again making a request to appoint an independent arbitrator for resolving the dispute, but no response to this notice was sent by the respondents. At this stage, the prayer of learned counsel for the applicant is to appoint a sole arbitrator to resolve the dispute.

Learned counsel for the respondent no.4 has not opposed the application for appointment of the sole arbitrator and her only submission is that a senior advocate of this Court be appointed as sole arbitrator to resolve the dispute.

No one has appeared for respondent nos. 1 to 3, though they are served.

In the aforesaid circumstances, it is found that the arbitration agreement is undisputed and that the dispute exists between the parties and due notice under Section 21 of the Act has been served. Hence, a case for accepting the prayer for appointment of the sole arbitrator is made out. Accordingly, Mr. Dhruba Ghosh, senior advocate of this Court, is appointed as Arbitrator to resolve the dispute between the parties, subject to submission of declaration by the proposed Arbitrator in terms of Section

12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side, forthwith.

[PRAKASH SHRIVASTAVA, C.J.]

s.kumar