

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

AP/803/2022

SANDHYA GHOSH
VERSUS
BISWAJIT BISWAS

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

Date: 5th January 2023.

APPEARANCE:

Ms. Kabita Mukherjee, Advocate
Mr. Manas Dasgupta, Advocate
... for applicant.

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 development agreement dated 28th July 2015 was executed between the parties and the said development agreement contained the following arbitration clause:-

“17. ARBITRATION

In the event of any dispute or differences arising between the parties in regard to this agreement or any matter connected therewith, the same will be referred to and settled by two independent Arbitrators, one to be appointed by each party, who shall jointly appoint an Umpire at the commencement of the reference and the award of the Arbitrators or the Umpire as the submission within the meaning of the Arbitration and Conciliation Act, 1996 and its statutory modification and/or enactments thereunder for the time being in force.”

He has also submitted that dispute had arisen between the parties as there was a breach of the terms of the agreement by the respondent.

Therefore, invoking the arbitration clause, initially, applicant had served the notice dated 15.12.2021 to the respondent proposing the name of Sri Debasis Das, advocate, as the nominee arbitrator of the applicant. Thereafter, the said nominee arbitrator had expressed inability. Therefore, fresh notice dated 25th July 2022 in terms of Section 21 of the Act was served by the applicant to the respondent proposing the name of Mr. Meghajit Mukherjee, advocate of this Court. In spite of receipt of the said notice, no response has been received from the respondent.

Though the respondent is served in the present AP, but no one has appeared on behalf of the respondent to oppose the present application. Hence, I am of the opinion that in view of the undisputed development agreement which contains the arbitration clause and also the existing dispute between the parties and service of notice under Section 21 of the Act, a case is made out to accept the prayer for appointment of the sole arbitrator to resolve the dispute between the parties.

Accordingly, Mr. Debashis Kundu, 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.]