

13th March, 2024
Ct. 1
D/L 10
(AK)

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.O. 16 of 2024

Bikash Prasad and others
Versus
Brij Bihari Shaha

Mr. Subham Ghosh
Mr. Mayank Roy
... for the petitioners.

1. The affidavit-of-service is filed in court today and shows that the respondent was served by courier yesterday. This was pursuant to the direction given to the petitioners on 8th March, 2024 to serve the respondents before the matter is taken up.
2. The respondent is not represented despite service.
3. The dispute between the parties arises out of a Deed of Agreement for sale (Bainanama) dated 7th September, 2022 whereby the respondent was to sell a piece of land along with the building to the petitioners upon consideration of approximately Rs.1.15 crores. The petitioners paid Rs.30 lakhs to the respondent as part of the consideration amount on various dates in May and September, 2022.

4. The petitioners were constrained to apply for interim protection before the learned District Judge, Jalpaiguri which was not granted. The petitioners' application under Section 9 of The Arbitration and Conciliation Act, 1996 is presently pending.
5. The petitioners thereafter invoked the arbitration clause (clause 12) in the Agreement by way of a notice under Section 21 of the 1996 Act on 3rd November, 2023. The respondent refused to accept service of this notice. The evidence of such refusal is part of records.
6. The dispute would be evident from the submissions made on behalf of the petitioners as well as the material placed before the court. The respondent did not reply to the petitioners' invocation notice. There is also no correspondence from the respondent to indicate any defence to the petitioners' allegation.
7. This court is hence of the view that the petitioners have established a case for appointment of an Arbitrator under Section 11(6) of the 1996 Act.
8. C.O. 16 of 2024 is accordingly allowed and disposed of by appointing Mr. Nilay Chakraborty, Counsel as the Arbitrator for resolution of the

disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed format within three weeks from date.

9. The petitioners shall communicate this order to the learned Arbitrator by 4.30 p.m. tomorrow, i.e. 14th March, 2024.

10. The original Agreement, which is part of records, may be returned to the petitioners as prayed for on their behalf. The petitioners shall approach the concerned Department for the same.

(Moushumi Bhattacharya, J.)