

OD-27

ORDER SHEET

AP/63/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

N C PRIVATE LIMITED
VS
RAMEN SAIN

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 15th July, 2024.

Appearance:

Mr. Parashar Baidya, Adv.

Mr. I. Ray, Adv.

Mr. Debangshu Bandhu, Adv.

Mr. Arka Chakrabroty, Adv.

...for the petitioner

Mr. Shiladitya Barma, Adv.

Ms. Priyanka Ghosh, Adv.

...for the respondents

The Court: The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 due to lack of consensus between the parties as to appointment of Arbitrator. Learned counsel for the respondent contends that before invoking the arbitration clause under Section 21 of the 1996 Act, the petitioner approached the Criminal Court and the respondent had to obtain bail.

The petitioner subsequently sought reference of the dispute to arbitration which according to the respondent ought not to be allowed.

Upon considering the submissions of the parties, this Court is of the opinion that a proceeding under the relevant provisions of criminal law is not mutually exclusive with a separate civil claim on the basis of the self-same cause of action. The issue arises in respect of a money claim of the petitioner, remedies in respect of which are available under both civil and criminal jurisdiction since allegations of cheating have also been made by the petitioner.

Thus, the prior reference to a criminal Court and/or resort to the criminal law cannot operate as a deterrent/bar to the dispute being decided insofar as the civil claim is concerned by an Arbitrator. Since the dispute between the parties regarding the money claim is covered by the arbitration clause of the agreement between the parties and the dispute is otherwise arbitrable, I do not find any reason to refuse the prayer of the petitioner.

Accordingly, AP/63/2024 is allowed, thereby appointing Justice Subrata Talukdar (Retired), as the sole Arbitrator to resolve the dispute between the parties, subject to obtaining a disclosure from the said learned Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration within the confines of the Arbitration and Conciliation Act, 1996 read with Schedule – IV thereof.

(SABYASACHI BHATTACHARYYA, J.)