

ORDER SHEET

AP/308/2021

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

PRABIR DUTTA AND ANR.
VS
PROVAS CHOWDHURY

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 5th August, 2024.

Appearance:
Mr. Ganesh N. Jajodia, Adv.
Ms. Nitu Singh, Adv.
Ms. Ritika Kedia, Adv.
...for the petitioners

Mr. Mani Sankar Chowdhury, Adv.
...for the respondent

The Court: Learned counsel for the petitioners contends that the agreement between the parties for sale of a property contains an arbitration clause. The present dispute pertains to a claim for money.

Learned counsel for the respondent submits that a previous application under Section 11 of the Arbitration and Conciliation Act, 1996 filed by the petitioners was dismissed. That apart, it is submitted that on the self-same claim, a criminal proceeding has been initiated by the petitioners which is now sub judice before the jurisdictional Court.

However, none of the above objections can be sustained. Insofar as the previous rejection of the application under Section 11 is concerned, it is found from the records that the same was dismissed for default and there was no adjudication on merits of the same.

Due to the peculiar features of an application under Section 11 of the Arbitration and Conciliation Act, 1996, which does not involve a judicial exercise orf adjudication of any dispute, the principle of *res judicata* and/or Order 9 Rule 9 of the Code of Civil Procedure are not applicable to such an application. Hence, the mere prior dismissal for default of a similar application cannot come in the way of the Court taking up the present matter.

Insofar as the pendency of the criminal proceeding is concerned, the scopes and ambits of a criminal proceeding and a civil dispute, the latter being arbitrable, are different, though they may very well arise from the self-same set of facts which comprise of the cause of action. However, in view of the scopes and reliefs claimed in a criminal and a civil proceeding being distinct and different, it cannot be said the pendency of the criminal matter on the self-same set of facts deters the civil dispute from being adjudicated by an Arbitrator.

I find from the annexures to the present application that Clause 14 of the agreement between the parties contains an arbitration clause and the dispute between the parties comes within the ambit of the same. The dispute sought to be raised by the petitioners is implicitly and inherently arbitrable as well and, as such, there cannot be any bar to appointment of an Arbitrator. Since the

parties cannot agree on the arbitrator, AP/308/2021 is allowed on contest, thereby appointing Mr. Tanmay Mukherjee, Advocate (Mobile No. 9874218610), a member of the Bar Association, 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 remuneration of the Arbitrator shall be fixed by the Arbitrator in consonance with the provisions of the 1996 Act, read with its Schedules.

(SABYASACHI BHATTACHARYYA, J.)