

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/534/2024
Nemai Dhar
VS
Hare Krishna Roy

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 15th May, 2024.

Appearance:
Mr. S. Sen, Adv.
...for the petitioner.

The Court: Affidavit of Service filed on behalf of the petitioner be kept with the records.

It appears from the said Affidavit that despite attempts to serve the respondent, the respondent has refused to accept service. In such circumstances there has been proper and good service on the respondent.

This is an application under Section 11 of the Arbitration & Conciliation Act, 1996.

The disputes between the parties arise out of a development agreement dated 18 January, 2017.

Clause 16.1 of the agreement, *inter-alia*, provides as follows :

“16.1 All disputes and differences arising out of this agreement in relation to the determination of any liability of the parties hereto or the construction and interpretation of any of the terms and meaning thereof shall be referred to the Arbitration to the Arbitrator, nominated by the Developer. Any statutory modification or change there under from the time to time in force and decision/award of the said Arbitrator shall be final and binding upon the parties.”

It is submitted on behalf of the petitioner that in terms of the agreement, the petitioner has incurred huge investment and has also evicted the tenants and obtained a sanction plan. After making substantial progress, the respondent is now refusing to honour their obligations and resiling from the agreement.

By a letter dated 16 February, 2024 issued under Section 21 of the Arbitration & Conciliation Act, 1996, the respondent had invoked the arbitration clause and sought for appointment of an Arbitrator. There has been no response to such communication.

In my view, there are live arbitral disputes covered under the arbitration clause which require adjudication. Accordingly, AP-COM/534/2024 is disposed of by appointing Hon'ble Mr. Justice Ashim Kumar Banerjee (Retired) as Arbitrator, subject to the Arbitrator communicating his consent to the Registrar, Original Side of this Court within three weeks from date. The Advocate on Record of the petitioner shall communicate this order to the Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP-COM/534/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)