

OCD-9

ORDER SHEET

AP-COM/587/2024

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

PS VINAYAK COMPLEX LLP
VS
ARIJIT PAUL

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 28th June, 2024.

Appearance:

Mr. Rohit Mukherjee, Adv.

Sm. Somali Bhattacharya, Adv.

..for the petitioner

The Court: Affidavit of service filed today be kept on record.

Despite two attempts to serve on the respondent and service having been effected validly, as borne out by the affidavit of service on record, none appears for the respondent at the time of call.

The petitioner contends that the petitioner had entered into an agreement for sale with the respondent where the petitioner was acting in the capacity of developer and the respondent a purchaser.

As per the allegation of the petitioner, the respondent having failed to pay part of the consideration for transfer, a dispute arose between the parties which falls within the contemplation of the arbitration clause i.e., Clause 33 of the said agreement.

The petitioner raised the dispute and claimed the disputed amount vide a communication dated February 3, 2024, which is annexed as Annexure B at page 125 to the present application. The track reports of the postal service are also annexed in that regard in the succeeding pages of the application. The said communication having failed to elicit any response, the petitioner invoked the arbitration clause by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on March 2, 2024, which is also annexed at page 134 of the present application. The track report with regard to the service of the same is annexed at page 138 of the said application. The petitioner also issued a corrigendum to the previous notice under Section 21 insofar as the date of the same is concerned, on March 11, 2024, which is annexed at page 131 of the application and the track report regarding service thereof in the two succeeding pages.

Upon a perusal of Clause 33 of the agreement between the parties, it is clear that all or any dispute arising out of or touching upon or in relation to the terms and conditions of the said agreement, including interpretation and validity of the terms thereof and the respective rights and obligations of the parties, are to be settled by mutual discussions first, failing which under the 1996 Act. For such purpose, as per the said clause, the Courts of Kolkata alone shall have jurisdiction to entertain the disputes between the parties.

In view of the nature of the dispute raised by the petitioner, this Court is satisfied that the same falls within the purview of Clause 33. Moreover, the dispute is inherently arbitrable and this Court has jurisdiction to take up the application under Section 11 of the 1996 Act.

In such view of the matter, since the respondent chooses to deliberately abstain from the hearing in spite of being repeatedly served, there is no other option left before the Court but to decide the application ex parte.

Hence, AP-COM/587/2024 is allowed, thereby appointing Mr. Suddhasatva Banerjee, a member of the Bar Library Club, as the sole Arbitrator to resolve the dispute between the parties, subject to a declaration being obtained from the said learned Arbitrator in terms of Section 12 of the Arbitration and Conciliation Act, 1996. The remuneration of the learned Arbitrator shall be decided by the Arbitrator within the framework of the Arbitration and Conciliation Act, 1996, read with its Schedules.

(SABYASACHI BHATTACHARYYA, J.)