

OD-3

ORDER SHEET

AP/108/2024

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

VED PRAKASH JAISWAL AND ORS.
VS
M/S SUNDARAM REAL ESTATES PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 21st August, 2024.

Appearance:
Mr. Nilanjan Bhattacharjee, Adv.
Mr. Ajit Kr. Mishra, Adv.
Mr. Suprovat Banerjee, Adv.
...for the petitioner

The Court: Despite service, none appears for the respondent.

Affidavit of service filed today be kept on record.

The petitioner/landowner stakes a claim against the respondent/developer on the strength of an agreement of the year 2017. As per the agreement, the developer was to complete the work within three years. Having not done so, the petitioner seeks compensation.

Upon being confronted by the Court with the query as to whether the underlying claim of the petitioner is time-barred, learned counsel for the petitioner submits that the same is arguably a continuing claim and the cause of action is also continuous.

That apart, it transpires that the petitioner, if given the opportunity, may furnish further evidence to satisfy the Arbitrator as to whether there was any correspondence between the parties in the meantime to prolong the limitation period.

Be that as it may, it would be premature at this stage to decide conclusively on the issue of limitation, which in the present case is a mixed question of law and fact, and it is best left to the judgment of the learned Arbitrator, as and when appointed, to decide such issue in accordance with law.

It appears from the arbitration clause in the agreement between the parties that the same covers the dispute now sought to be raised between the parties and the issues involved are otherwise arbitrable in principle.

Accordingly, AP 108 of 2024 is allowed, thereby appointing Mr. Sanjay Mukherjee, an Advocate (Mob No. 9836430202) practising in this Court, as the sole arbitrator to resolve the disputes between the parties, subject to a disclosure being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said Arbitrator. The learned Arbitrator shall, in consultation with the parties and in consonance with the provisions of the 1996 Act and its Fourth Schedule, fix his own remuneration.

It is made clear that all issues, including the issue of the limitation, are being kept open for being decided by the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)