

OCD-12

ORDER SHEET

AP/261/2023

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

SRI PRABIR KUMAR JANA AND ANR.
Versus
M/S. SHREE DURGA AVASHAN PVT. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 10th January, 2024.

Appearance:

Mr. Ovik Sengupta, Adv.

Mr. Rudranil Ghosh, Adv.

...for the petitioners

The Court: The petitioners seek interim orders in terms of an Agreement for Development dated 26th August, 2013 which was executed between the petitioners as the landlords and the respondent as the developer/contractor.

By the said Agreement, the respondent was to complete the project and hand over the same to the petitioner within 24 months from the date of the sanctioned plan which is Clause 4.5 of the Agreement.

Learned counsel appearing for the petitioners submits that the respondent obtained the sanctioned plan sometime in 2016. Counsel submits that the sanctioned plan expired by the time the present application was filed and that the respondent has not undertaken any work pursuant to the Agreement.

The respondent has remained unrepresented from the time this matter was first considered, which was in September, 2023. The petitioners were given several opportunities to serve the respondent.

The petitioners were also given a chance to bring additional documents on record to take the petitioners' case forward by way of a supplementary affidavit. The supplementary affidavit however discloses only one document of 8th August, 2019 from the first petitioner to the Directors of the respondent stating that the respondent was being given 15 days' time from the receipt of the letter to take necessary action in terms of the Development Agreement. The respondent was also to inform the petitioners whether the respondent intends to start the construction work and complete the same and deliver the allotted portion to the petitioners.

There is no other document which has been brought to the notice of the Court with regard to continuing correspondence between the parties. Significantly, the letter dated 8th August, 2019 gave the respondent 15 days to reply to the letter, failing which the petitioner no.1/the petitioners will take necessary action against the respondent. The present application was however filed on 28th April, 2023, which is almost four years after the petitioners' letter.

Section 9 of the 1996 Act contemplates discretionary orders from the Court where the Court considers it necessary to intervene to protect the subject-matter of the arbitration which has either commenced or is to commence or has even been completed between the parties by way of an award. The discretion is exercised on the material placed before the Court.

In the present case, apart from one letter of 8th August, 2019, the petitioner has not placed any other documents to show that there has been failure on the part of the respondent to act in terms of the Development Agreement. The delay of four years in filing the application, even if the pandemic is taken into account, has not been explained either in the petition or by the facts which have been orally pleaded in Court.

The petitioner seeks an order of restraint on the respondent from dealing with or disposing of or encumbering the petitioners' immovable property which forms part of the Development Agreement. The Court is not inclined to give this relief in the absence of further or better particulars which would have established the petitioners' case for such relief.

AP/261/2023 is accordingly dismissed in view of the above reasons.

The supplementary affidavit is taken on record.

(MOUSHUMI BHATTACHARYA, J.)