

AP/312/2023

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

TREX VENEERS PVT. LTD.

-VERSUS-

ARADHANA DISTRIBUTORS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 10th December, 2024

Appearance:

Mr. Meghnad Dutt, Adv.

Mr. Dilip Kumar Ghosh Adv.

...for the Petitioner.

Mr. Suddhasatva Banerjee, Adv.

Ms. Akanksha Mukherjee, Adv.

Mr. Pradeep Kumar, Adv.

...for the respondent.

The Court: This is the third application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator. An arbitral tribunal had been appointed to adjudicate the disputes between the parties. The tribunal terminated the mandate on the ground that the petitioner had failed to submit the statement of claim within the stipulated date. Thereafter, the petitioner filed AP/202/2010. The said application was dismissed by order dated July 29, 2010, by a coordinate Bench. The Court held that when there was no revival of the arbitral proceeding or no ground was made out to reverse such termination, there was no scope for appointment of any arbitrator. The arbitral proceeding stood terminated.

Relying on the second last paragraph of the said order Mr. Dutt, learned advocate for the petitioner submits that His Lordship had reserved the liberty to the petitioner to take out a fresh application on the self-same cause of action seeking revival of the mandate of the arbitrator, if so advised. Based on such liberty, the application has been filed before this Court.

Mr. Banerjee, learned advocate for the respondent points out to an order passed by the same learned Judge. The order was passed on December 14, 2018 by which the application for clarification filed by the petitioner being GA/1071/2011, was disposed of. His Lordship recorded that the clarification sought for was whether the dismissal of the application under Section 11 of the Arbitration and Conciliation Act, 1996 would operate as *res judicata* if the petitioner challenged the termination of mandate before any Court or forum. His Lordship clarified that by order dated July 29, 2010 the Court held that as the arbitrator had terminated the arbitral reference, the Court was powerless to appoint an arbitrator under Section 11.

Thereafter, another application was filed before this Court being AP/152/2019. The said AP/152/2019 was not pressed by the petitioner on the ground that the petitioner was willing to take appropriate steps in view of the subsisting orders of the High Court, by approaching the appropriate forum. Prior to filing the said AP, the petitioner approached the arbitral tribunal, seeking revival of the mandate. Thus, the submission of Mr. Dutt that the petitioner had gone back to the appropriate forum for

revival as per the liberty granted by a coordinate Bench of this Court, but the same not having been revived he had again approached this Court by filing AP/312/2019 is barred by the principles of constructive *res judicata*, if not *res judicata*. Therefore, the decision in the case of *Srei Infrastructure Finance Ltd. vs. Tuff Drilling Pvt. Ltd.* reported in (2018) 11 SCC 470 cited by Mr. Dutt will not be applicable in this case. The application before the Tribunal was filed before filing AP/152/2019, but such point was not urged.

Accordingly, AP/312/2023 is dismissed without any order as to costs.

All parties are to act on the basis of server copy of this order.

(SHAMPA SARKAR, J.)