

ORDER SHEET

AP/144/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SHIBASISH KUSHARY AND ORS
VS
JAIN GROUP PROJECTS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 19th August, 2024.

Appearance:

Mr. Rakendu Lal Mittra, Adv.

Mr. Pushan Majumdar, Adv.

...for the petitioners

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

The affidavit of service filed today be kept on record.

Upon hearing learned counsel for the petitioners, it transpires that Clause 6.15 of the agreement for sale between the parties contains an arbitration clause which covers the dispute now raised by the petitioners. Since the arbitration clause contemplates appointment of a named Arbitrator of the respondent, the same is hit by Section 12 of the Arbitration and Conciliation Act, 1996, hence justifying the filing of the present application. It also appears that despite the petitioners having invoked the arbitration clause by issuance of a notice under Section 21 of the 1996 Act, there has not been any consensus on such count from the end of the respondent.

Two objections might have been raised by the respondent, if represented in Court today; first, that the agreement is not duly stamped/registered and secondly, that there might be a delay on the part of the petitioners in making the claim.

Insofar as the first point is concerned, it is well settled that the said objection can very well be taken before the Arbitrator, as and when appointed, and it is beyond the charter of the Court taking up an application under Section 11 of the 1996 Act to conclusively decide such issue or to insist upon prior impoundment of a document.

Insofar as the issue of delay is concerned, it is evident that the same is arguable, requiring evidence to be taken from the parties, which makes it referable to the Arbitrator. Thus, there cannot be any impediment in referring the present matter to arbitration.

Accordingly, AP/144/2024 is allowed, thereby appointing Mr. Tanmoy Mukherjee, an Advocate practicing in this Court (Mobile No. 9874218610), as the sole Arbitrator to resolve the disputes between the parties, subject to a declaration being obtained from the said learned Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996. It is made clear that the learned Arbitrator shall fix his own remuneration in consonance with the provisions of the 1996 Act and Schedule IV thereof.

(SABYASACHI BHATTACHARYYA, J.)