

OCD-25

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

AP-COM/743/2024

BIMAL GANGULY
VS
SOMA SAHA

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 4th September, 2024

Appearance:

Mr. Shaunak Mitra, Adv.

Mr. Dripto Majumdar, Adv.

Mr. Victor Chatterjee, Adv.

...for the petitioner

Mr. Ritoban Sarkar, Adv.

Mr. Pourush Bandyopadhyay, Adv.

Mr. Shivam Pathak, Adv.

Mr. Anand Duvedi, Adv.

Mr. Komran Hussain, Adv.

...for the respondent

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

The present application has been filed by the petitioner, one of the partners of a partnership firm, purportedly with regard to disputes arising out of a partnership deed between the parties, which contains an arbitration clause.

It is submitted by learned counsel for the petitioner that the plinth of the dispute is primarily the distribution of assets and other disputes arising in connection with the dissolved partnership firm. The petitioner gave a notice under Section 21 of the Arbitration and Conciliation Act, 1996, which was replied to by the respondent.

Learned counsel for the respondent takes an objection to the maintainability of the present application on the ground that the dispute arises within the confines of primarily a development agreement between the parties, which does not have any arbitration clause.

Learned counsel for the respondent seeks to rely on the correspondence leading to the dispute, which are also annexed to the petition, as well as the averments made in the present application, in support of his contention that the disputes which led to the present application arise within the ambit of the development agreement, and accordingly, the development agreement is the fulcrum of the dispute. Since there is no arbitration clause in the development agreement, the disputes cannot be referred to arbitration.

Upon a careful consideration of the materials annexed to the application and hearing counsel, this Court is of the opinion that it is, in the least, arguable as to whether the rights flowing from the development agreement are the primary plinth of the dispute or the respective rights and liabilities of the parties flowing from the partnership deed.

It may be argued both ways, as it transpires from the correspondence leading to the present dispute.

However, the focal point through which a Section 11 Court has to look at the dispute is the notice under Section 21 of the 1996 Act, which is the immediate genesis of the process of seeking arbitration. In paragraph 5 of the said notice in the present case, the petitioner alleged that the partnership stood dissolved and the petitioner had called upon the respondent to discuss and

decide on the manner and modalities for equitable distribution of the profits and assets of the firm between the partners, as well as distribution of the units in two apartments which have been named therein, which were apparently also the subject-matter of the development agreement.

Paragraph 8 of the said notice indicated that the parties have failed to arrive at any consensus regarding steps to be taken for distribution of the assets and profits of the firm pursuant to dissolution of the partnership.

Thus, several references have been made in the said notice to the rights of the parties flowing from the partnership deed, although the development agreement and the rights flowing therefrom might be incidentally or even primarily important in resolving such disputes. However, the question as to whether the rights and liabilities flowing from the development agreement are incidental or central to the disputes can only be decided upon appreciation and interpretation of material evidence and the conduct of the parties as well as surrounding circumstances, which is much beyond the charter of the Section 11 Court to enter into. Such questions are best left for adjudication before the Arbitrator.

Since the arbitration clause covers the basic premise of the disputes now raised between the parties and the issues are otherwise arbitrable, there cannot be any hindrance to reference to Arbitrator.

Accordingly, AP-Com/743/2024 is allowed, thereby appointing Mr. Pradip Kumar Ghosh, Senior Advocate 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. The learned Arbitrator shall fix his own remuneration in consultation with the parties and within the framework of the 1996 Act and its Fourth Schedule.

It is made clear that all issues between the parties, including the question as to whether the dispute is arbitrable and comes within the arbitration clause of the partnership deed, are left open to be decided by the learned Arbitrator. Since no affidavits have been directed, it is deemed that none of the allegations made in the application are admitted by the respondent.

(SABYASACHI BHATTACHARYYA, J.)