

ORDER SHEET  
AP-COM/797/2024  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL DIVISION

S M FEROZEUDDIN ALAMEER  
VS  
CANOPY PROJECTS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 2<sup>nd</sup> September, 2024.

*Appearance:*  
*Mr. Zeeshan Haque, Adv.*  
*Mr. Younus Sultan, Adv.*  
*Mr. Sumit Biswas, Adv.*  
*Ms. Rajashree Bhowmick, Adv.*  
*...for the petitioner*

The Court: Despite service, none appears for the respondent. The affidavit of service filed today be kept on record.

The petitioner entered into an agreement for purchase of a property, which also had some ingredients of development by the respondent.

The respondent having failed to complete the work within the stipulated time, the petitioner has invoked the arbitration clause. Prior thereto, an application under Section 9 of the Arbitration and Conciliation Act, 1996 was also moved by the petitioner, where an ad interim order was passed in favour of the petitioner. However, in the said proceeding, an application for vacating such order has also been filed by the respondent. Subsequently, the petitioner gave a

notice under Section 21 of the said Act to the respondent which was replied to in writing by the respondent.

The respondent, as it appears, has consistently raised the objection that the underlying principal dispute regarding which reference is sought is *ex facie* time-barred.

Learned counsel for the petitioner places the relevant clauses of the agreement. In Part II of the Second Schedule of the agreement, it is stipulated that the development of the scheme plot/s and the properties appurtenant thereto shall be completed within the time limit as above “as far as possible”.

Learned counsel for the petitioner argues that the said phrase leaves a leeway for the parties to have extensions of the outer time-limit for making construction. That apart, it is contended that in an agreement of the nature as the present one, where construction work is involved, there may be several impediments in the way, for which time cannot be strictly construed to be the essence of the contract.

Moreover, it is argued by the petitioner that since the petitioner also seeks to make an alternative prayer for damages apart from the principal relief of specific performance, the cause of action for such damages arises *de die in diem* and as such, it cannot be said that the claim of the petitioner is *ex facie* time-barred.

Upon a careful scrutiny of the documents and on hearing learned counsel for the petitioner, this Court is of the opinion that the petitioner has made out a *prima facie* case to the effect that it is at least arguable as to whether the claims sought to be referred to arbitration are time-barred or not.

The very arguability of the case mandates the Court, sitting under Section 11 of the 1996 Act, to refer the matter to arbitration, leaving it open for the learned Arbitrator so appointed to decide all issues, including the questions of maintainability and limitation.

Since the dispute is otherwise arbitrable and comes within the ambit of the arbitration clause of the agreement between the parties, there cannot be any other impediment in referring the matter to arbitration.

Accordingly, AP-COM/797/2024 is allowed, thereby appointing Justice Aloke Chakrabarti (retired) as the sole arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator.

The learned Arbitrator shall fix his own remuneration, in consultation with the parties and within the framework of 1996 Act, in particular the Fourth Schedule thereof.

It is made clear that all questions, including the question of limitation, are left open for being decided by the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)