

O-130

ORDER SHEET

AP/342/2022

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

RANJANA KHANNA
VS
SOUTH CITY PROJECTS (KOLKATA) LTD AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 9th July, 2024.

Appearance:
Mr. Arif Ali, Adv.
Mr. Abhidipta Tarafdar, Adv.
Mr. Sarban Bhattacharjee, Adv.
...for the petitioner

Mr. Paritosh Sinha, Adv.
Mr. K.K. Pandey, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Enakshi Saha, Adv.
...for the respondent no.2

The Court: Upon hearing learned counsel for the parties, it transpires that the named arbitrator in the arbitration clause, that is, Clause 9.1 in the agreement for sale entered into between the parties, has since expired and as such, the matter is otherwise open for being referred to arbitration.

Learned counsel for the respondent opposes the application, apart from on several factual and legal aspects which are required to be gone into on merits, on the ground that the agreement is void *ab initio* since no consideration for sale is mentioned therein.

However, even the question as to whether the agreement is to be construed as void and whether consideration passed factually in any form between the parties and the incidental issues are required to be decided on merits by the appropriate adjudicating authority.

Since the arbitration clause squarely covers the disputes between the parties and the same was duly invoked by issuance of notice under Section 21 of the 1996 Act, there ought not to be any impediment in referring the matter to arbitration by appointing an Arbitrator, leaving it open for all issues as raised by the parties to be decided on merits by the Arbitrator.

In such view of the matter, AP/342/2022 is allowed, thereby appointing Mr. Rajarshi Dutta, Advocate (Mob. No. 9830128123), a member of the Bar Library Club, as the sole Arbitrator to resolve the dispute between the parties, subject to obtaining a disclosure from the said learned Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996. The remuneration of the Arbitrator shall be fixed by the Arbitrator in consonance with the provisions of the 1996 Act, read with its Schedules.

It is made clear that none of the issues between the parties have been entered into by this Court on merits, as it cannot be under Section 11 of the 1996 Act, and all issues are left open, including the counter claims, if any made by the respondent, as well as the issue of jurisdiction of the Arbitrator to be urged before the learned Arbitrator and decided by the said tribunal.

(SABYASACHI BHATTACHARYYA, J.)