

AP/194/2024

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

SIBAJI NASKAR AND ORS.

-VERSUS-

MANAB PAUL.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 9th December, 2024

Appearance:

Mr. Shourjyo Mukherjee, Adv.

Mr. Sourajit Dasgupta, Adv.

Mr. Viswarup Acharya, Adv.

Mr. Akash Dutta, Adv.

...for the Petitioner.

Mr. Ramkrishna Bhattacharya, Adv.

Mr. Kaushik Choudhury, Adv.

Mr. Debasish Roychowdhury, Adv.

Mr. P. K. Goswami, Adv.

...for the respondent.

The Court: Affidavit of service filed in Court today is taken on record.

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) seeking appointment of arbitrator.

The contention of the petitioners is that the developer was required to obtain sanction, start construction and deliver possession. He failed to do so. Till date, sanction was not obtained. In the meantime, the developer instituted two suits. The first suit was withdrawn and a second is pending. The petitioners filed an application under Section 8 of the said

Act. The petitioners rely on the arbitration clause which is clause 10.17 of the development agreement. The petitioners claim cancellation of the agreement, revocation of the power of attorney and damages.

The petitioners contend that based on the development agreement entered into between the respondents and the mother of the petitioners, the respondent was required to obtain sanction and complete construction within 21 months and an extended period of six months from the date of receipt of the sanctioned plan. It is further submitted that till date the respondent did not obtain sanction, although possession was handed over to the respondent. Thus, the disputes and differences arose.

Learned advocate for the respondent denies that possession was handed over. According to the respondent, possession was handed over to another party and such party has already obtained a sanction plan. It is submitted that sanction could not be obtained because there were disputes with the persons living in the locality. He further submits that disputed questions of facts are involved in this application and petitioners have suppressed such material facts. A civil suit and a writ petition filed by the respondent is pending.

Perused the arbitration clause and the notice invoking arbitration. All that the referral Court is required to see is whether there is an arbitration clause and whether the dispute is alive. In this case, admittedly, there is an unregistered development agreement of 2009 and the said development agreement contains an arbitration clause. The right of the petitioner to invoke arbitration is available at this stage. However,

the law applicable in respect of an unregistered deed, is a matter which will be dealt with by the arbitrator at the appropriate stage. The other issues which the respondent has raised, i.e., the pendency of a suit, limitation, arbitrability of the dispute etc. can be raised before the learned arbitrator and the referral Court is not required to deal with such issues.

Under such circumstances, this Court appoints Mr. Satadeep Bhattacharyya, Advocate, Bar Library Club as the sole arbitrator to adjudicate the disputes between the parties. This appointment is subject to compliance of Section 12 of the Act of 1996 by the learned Arbitrator. The learned arbitrator will be at liberty to fix his remuneration as per the Schedule of the Act of 1996.

All points including the point of limitation is left to be urged before the learned Arbitrator.

Accordingly, AP/194/2024 is disposed of.

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

(SHAMPA SARKAR, J.)