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

AP/246/2022
IA NO: GA/1/2022

SHRISTI
VS
SMT. MINTU MAJEE AND ORS

AP/509/2022

SHRISTI
VS
SMT. MINTU MAJEE AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 2nd September, 2024

Appearance:
Mr. Sandip Kumar De, Adv.
Mr. Abhijit Sarkar, Adv.
...for the petitioner

Mr. Surya Prasad Chattopadhyay, Adv.
Mr. Arjun Samanta, Adv.
Mr. Ankit Chatterjee, Adv.
...for the respondent

AP/509/2022

The Court:- Learned Counsel for the respondent submits that the original development agreement containing the arbitration clause has not been produced before this Court. That apart, it is submitted that the receipts annexed to the application under Section 11 of the Arbitration and Conciliation Act, 1996 are also disputed.

Learned Counsel for the petitioner submits that initially a point was taken as to the development agreement being insufficiently stamped. However, in view of the latest legal position, the said question has to be decided by the Arbitrator.

In so far as the agreement is concerned, learned Counsel for the petitioner submits that any dispute as to the agreement can also be decided by the Arbitrator. It is also submitted by learned Counsel for the petitioner that in the pleadings, no objection as to the existence of the agreement or the arbitration clause has been raised.

A bare perusal of the pleadings indicates that the existence of the development agreement has not been challenged in specific terms by the respondent. That apart, since a copy of the agreement has been produced and the issue of sufficiency of stamp can only be decided by the Arbitrator and since the dispute now raised by the petitioner comes within the purview of the arbitration clause contained in the Development Agreement, there cannot be any reason not to refer the matter to arbitration. The objections to the veracity of the receipts and/or the existence/contents of the agreement as well as the issue of limitation, being mixed questions of fact and law, can very well be taken before the Arbitrator, as and when appointed.

Thus, AP/509/2022 is allowed, thereby appointing Justice Jayanta Kumar Biswas (retired) as the sole Arbitrator to resolve the dispute between the parties, subject to a declaration being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said learned Arbitrator. The learned Arbitrator

shall fix his own remuneration in consultation with the parties within the ambit of the 1996 Act and its Fourth Schedule.

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In view of appointment of a learned Arbitrator to resolve the dispute between the parties earlier in the day, the present application is dismissed as not maintainable with liberty to the petitioner to approach the Arbitrator with an appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 for the self-same reliefs as sought in the Section 9 application.

AP/246/2022 and GA/1/2022 are disposed of accordingly.

(SABYASACHI BHATTACHARYYA, J.)

SK.