

OD-11

ORDER SHEET

AP/697/2022

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

MS. SWAPNA BAIDYA AND ANR.
VS
SMT. MANU BAIDYA AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th January, 2024

Appearance:

Mr. Gopal Pahari, Adv.

Ms. Mandeep Kaur, Adv.

Ms. Piyali Kulari, Adv.

Mr. Sarosij Dasgupta, Adv.

Ms. Afreen Begum, Adv.

The Court: The dispute between the parties is apparent from the facts placed on record. The petitioners own 50% of the partnership assets while the respondents own the remaining 50%. It appears from the records that the petitioners had made an earlier invocation of the arbitration clause contained in the Deed of Partnership dated 10th November, 2008 later modified to 18th September, 2018. The first invocation notice was of 24th June, 2016 where the petitioners claim that the petitioners sought for clarification of the accounts. The invocation led to an Award dated 5th May, 2022.

The petitioners, however, found that the respondents had siphoned monies from the partnership accounts subsequent thereto and issued a notice

of dissolution of the partnership on 30th June, 2022. The respondents replied on 15th July, 2022 conceding to the dissolution and expressing their intention to continue with the partnership business.

The petitioners invoked the arbitration agreement for the second time on 20th July, 2022 and the respondents replied on 19th August, 2022 referring to the Award of 5th May, 2022 stating that the disputes between the parties had already been decided by the learned Arbitrator in terms of the Award.

The only question which arises before the Court is whether the application should be disallowed in view of the earlier reference and the Award passed by the learned Arbitrator. While the petitioners, through learned counsel, say that the second reference is with regard to the new disputes, learned counsel appearing for the respondents disagrees with such contention.

It has now conclusively been settled that considerations of *res judicata* are irrelevant to an application made under Section 11 of the 1996 Act for appointment of Arbitrator; Refer: *Indian Oil Corporation Limited vs. SPS Engineering Limited*, (2011) 3 SCC 507. In that decision, the Supreme Court opined that the limited scope of Section 11 of the 1996 Act does not permit examination of the maintainability of a claim either on facts or in law and that the arbitral tribunal should decide whether the claim was barred by *res judicata*.

In the present case, apart from a dispute existing between the parties which is relatable to the arbitration agreement, there is also a fresh notice of invocation under Section 21 of the 1996 Act dated 20th July, 2022. The

question whether the petitioners are once again raising stale claims or ones which have already been decided by the learned Arbitrator is a question which is not for the Court but for the learned Arbitrator to decide.

AP/697/2022 is accordingly allowed and disposed of by appointing Mr. Raj Ratna Sen, Counsel, to act as the learned Arbitrator for resolving the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from the date of the communication of this order. It may be mentioned that Mr. Sen was also the Arbitrator in the previous proceedings between the same parties and would hence be best suited to decide the questions raised before this Court.

The petitioners' advocate-on-record shall communicate this order on the learned Arbitrator by 6th January, 2024 along with the requisite details of the contact person of the petitioners. Needless to say, the respondents will be at liberty to take the point of *res judicata* as a preliminary issue in the arbitration.

(MOUSHUMI BHATTACHARYA, J.)

bp.