

ORDER SHEET

AP/795/2023

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

LANDMARK CREATORS PRIVATE LIMITED
Versus
SMT. MOUTUSHI SADHUKHAN AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 15th January, 2024.

Appearance:

Mr. Aniruddha Mitra, Adv.

Mr. D. Mitra, Adv.

Mr. Meghnath Dutta, Adv.

...for the petitioner

The Court: The respondents have not appeared in this matter despite being served. This would be evident from the order dated 30th November, 2023.

The dispute arises out of a Development Agreement dated 24th November, 2012 wherein the petitioner has been described as the "Developer" and the respondents as the "Owners". Clause 9.1 of this Agreement contains an arbitration clause.

The petitioner was to develop 5 areas of land situated at Tagore Castle Street, Kolkata. Disputes arose between the parties with regard to the 108 tenants who were in occupation of the premises comprised of the 5 areas creating hurdles for developing the property under the terms of the Agreement.

The petitioner made substantial payments to the respondents for removal of the tenants. The petitioner claims that the petitioner could not proceed with the development work by reason of the tenants continuing to be in occupation of the premises. The petitioner made a complaint before the Officer-in-charge of the Jorabagan Police Station on 26th July, 2023 against the respondents for creation of new tenancies in the said property and accepting rents from the tenants. The petitioner claimed that the petitioner was cheated by the respondents.

The petitioner also wrote letters to the respondents with the apprehension that the respondents were seeking to alienate the property to third parties. The petitioner thereafter proceeded to invoke the arbitration clause by way of a notice under Section 21 of the 1996 Act. The notice is dated 28th July, 2023; the respondents replied to this notice on 16th August, 2023 denying the contents of the invocation.

The petitioner also approached the learned City Civil Court for interim protection and obtained an order of status quo on 2nd August, 2023.

Although the respondents have chosen not to be represented, there is evidence of a clear dispute between the parties with regard to the petitioner's continuing interest in the Development Agreement and the respondents' refusal to proceed with the said Agreement. The disputes are also relatable to the arbitration clause contained in the Development Agreement.

AP/795/2023 is accordingly allowed and disposed of by appointing Mr. Emon Bhattacharya, Counsel, to act as the Arbitrator subject to the

learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 17th January, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.