

AP/768/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(Commercial Division)

DEBASIS BISWAS

-VERSUS-

JAGANI DEVI SHAW @ JAGNI DEVI
SAHO @ SAHA & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 14th November, 2024

Appearance:

Mr. Sutanu Chakrabarti, Adv.

...for the Petitioner.

Mr. Aman Baid, Adv.

Mr. Sumit Das, Adv.

...for the respondent.

The Court: The petitioner is the claimant and the developer. He has filed this application for appointment of an arbitrator in view of the disputes between the parties, arising out of the development agreement dated 26.09.2011.

According to the petitioner, the owner i.e., the respondent no.1 failed to hand over vacant possession of the subject property by removing the tenants. Thereafter, the respondent no.1 terminated the contract sometime in 2021 and revoked the power of attorney granted in favour of the petitioner. Simultaneously, the respondent no.1 entered into another development agreement with the respondent nos.2 to 4 dated December

20, 2021. Accordingly, the petitioner invoked the arbitration clause by a notice dated April 1, 2022.

Learned advocate for the respondent submits that the facts enumerated in the application were not correct. That the petitioner failed to comply with his part of the contract and that the claims were not tenable in the eye of law. They were barred under the applicable laws, including the law of limitation. That the respondent Nos.2 to 4 were not signatories to the subject agreement and this application was not maintainable against them.

This Court has considered the arbitration clause and the notice invoking the arbitration. At this stage, it is not necessary for the Court to delve deeper into the objection raised by the respondents. These issues can be decided before the learned Arbitrator. There is an agreement with an arbitration clause executed by and between the petitioner and the respondent No.1. Thus, the arbitration can proceed against the respondent No.1. The respondent Nos.2 to 4 are not signatories to the agreement. They have been wrongly impleaded. Instead of dismissing this application for misjoinder of parties with liberty to file a fresh and causing prejudice to the petitioner, the court directs that the names of the respondents be expunged.

Department is directed to delete the names of the respondent Nos.2 to 4 from the array of respondents.

Under such circumstances, this Court appoints Mr. Sakya Sen, learned Advocate to arbitrate the disputes between the petitioner and the

respondent No.1. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his remuneration as per the Schedule of the said Act.

Accordingly, AP/768/2022 is disposed of.

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

(SHAMPA SARKAR, J.)

A/s.