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

AP-COM/81/2024
RAJU DEY
VS
PUBLIC RELATION NURSING HOME AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : January 20, 2025

Mr. Ramdulal Manna, Adv.
Ms. Manju Manna [Dey], Adv.
Mr. Sayan Mukherjee, Adv. ...for petitioner.

Mr. Arun Kumar Das, Adv.,
Mr. Subhas Jana, Adv. ...for respondent nos.2, 3, 4, 5 and 7.

The Court :- This is an application for appointment of a learned Arbitrator on the strength of clause 13 of the partnership deed dated January 10, 2020. The petitioner is one of the partners, along with the respondents. Clause 13 of the deed of 2020 provides that in case of any dispute with regard to the share of any of the partners or any other issue arising out of the partnership deed, the parties would get the dispute resolved either by way of arbitration or by taking recourse to law.

Mr. Manna, learned Advocate for the petitioner submits that the dispute arose between the partners with regard to withholding the petitioner’s share in the profits of the business. Approximately, an amount of Rs.35 lakhs along with interest was payable. Mr. Manna further submits that although the partnership was reconstituted on January 21, 2022, the second deed was merely an amendment to the partnership deed of 2020 and clause 13 of the deed of 2020, which provides for settlement of dispute by arbitration, should be read into the second deed of 2022. The deed of 2022 did not revoke the arbitration clause. The deed provided for certain further rights and obligations of the parties, but was silent with regard to the share of profit and loss. Unless there was a specific clause stating that the earlier partnership deed stood revoked or cancelled or superseded, the arbitration clause would continue to operate between the parties and the second partnership deed would be treated as supplemental deed. According to Mr. Manna, the clause incorporated in the deed of 2022, that parties could not approach any forum or club or association for settlement of their grievances or disputes, was an illegal clause. None of the partners could be prevented from taking recourse to law.

Mr. Das, learned Advocate for the respondents submits that two of the respondents are non signatories to the partnership deed of 2020. The earlier partnership was dissolved upon retirement of eight partners and the deed of 2020 was given a go-bye by the parties. The partnership was reconstituted in 2022 by the deed of January 21, 2022 with different clauses. The heirs and legal representatives of the retired partners were not incorporated in the partnership. Rather six partners, who had not retired and two other persons, constituted the partnership and, accordingly, the deed was executed on January 21, 2022 with specific terms and conditions and without borrowing the terms and conditions of the deed of 2020 relating to the arbitration agreement. It is submitted that the second partnership deed governs the business. Clause 16 of the said deed provides that in case of any dispute and grievance between the partners arising out of the partnership business, the parties would settle the dispute amicably and shall not take recourse to any forum either legal or private. Under such circumstances, clause 16 would be the governing clause and the same does not provide for resolution of disputes by arbitration.

The learned Advocate further raises the question of validity of the notice invoking arbitration and submits that the petitioner, having understood that there was no arbitration agreement in the deed of 2022, had approached the respondent with a proposal to get their dispute resolved by an arbitral Tribunal. Each of party could nominate their arbitrator. Such provision was neither a part of the partnership deed dated January 10, 2020 nor the deed dated January 21, 2022.

Having considered the rival contention of the parties, this Court finds that by the partnership deed dated January 21, 2022, of which the petitioner is also a signatory and an existing partner is a reconstitution of the partnership business. The earlier partnership stood dissolved. The newly constituted partnership firm was running its business on the basis of the deed of January 21, 2022. The said deed cannot be taken as an amendment to the first deed. The clauses do not indicate so. Moreover, clause 16 does not indicate that there has been an agreement between the parties to get their disputes resolved by arbitration. Incorporation of such Clause clearly indicates that Clause 13 of the deed of 2020 was not made a part of the partnership deed of January 21, 2022. Rather, there is an ouster of arbitration.

Under such circumstances, the application fails and the same is dismissed.

However, the petitioner is always at liberty to approach the Member Secretary, Mediation and Conciliation Committee, High Court, Calcutta, seeking mediation or take recourse to such other mode of settlement as may be available for amicable settlement of the dispute.

This order shall not be construed as a decision of this court on the merits of the claim of the petitioner.

(SHAMPA SARKAR, J.)

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