

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/43/2025

SAMIR BHATTACHARYA & ANR.
VS
IPSITA SARKAR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 21st April, 2025

Appearance:

Mr. Aditya Mondal, Adv.

Ms. Rupsa Sreemani, Adv. ...for petitioners.

Mr. Shyamal Chakraborty, Adv.

Mr. Debajyoti Mondal, Adv.

Mr. Palash Goswami, Adv. ...for respondent.

1. This is an application for appointment of a learned Arbitrator in terms of the arbitration clause, being clause 24 of the Partnership Agreement. It appears that the parties had agreed that all disputes and differences shall be referred to a sole arbitrator to be appointed by the parties. In case of disagreement over the arbitrator, the arbitrator would be appointed in terms of the provisions of the Arbitration and Conciliation Act, 1996.
2. The petitioners have approached this court on failure of a consensus amongst the parties/partners to appoint an arbitrator to adjudicate the disputes and differences which have cropped up between them.
3. Mr. Chakraborty, learned advocate for the respondent submits that the terms and conditions of the said partnership deed do not indicate that the same was in effect a partnership agreement. Rather, the same is a tenancy agreement.

4. The existence of the arbitration clause is not in dispute. The parties before the court are signatories. From the recitals, it appears that on account of old age, the petitioners were not in a position to look after the day to day business of the partnership firm and they inducted the respondent as the new partner to run the business of ticket booking, canteen and fast food, confectionery, PCO and allied businesses. The respondent was inducted as a partner upon investing a sum of Rs.5 lakhs as security and also agreed to pay Rs.1,50,000/- per month to the petitioners.
5. This court, prima facie, does not find from the deed that the same is in the nature of a rent agreement.
6. However, all questions can be raised before the learned Arbitrator. Objections with regard to admissibility of the claims, the right of the petitioners under the said agreement and the point of limitation, etc. are left open to be decided by the learned Arbitrator, if raised.
7. The notice invoking arbitration was sent to the petitioners on January 6, 2025.
8. The contention of Mr. Chakraborty that the deed cannot be treated as a partnership deed as the losses were to be borne by the respondent, is also an issue with regard to arbitrability of the dispute. This issue can be raised before the learned Arbitrator.
9. Mr. Suhrid Sur, learned Advocate [Mobile No.9830428388] is appointed as the learned Arbitrator.
10. This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
11. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Arbitration and Conciliation Act, 1996.

12. AP/43/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

pkd/JM