

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/46/2025
RAVI HIMMATRAMKA
VS
GYBES NIRMAN PVT LTD.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 18th August, 2025.

Appearance:

Mr. Rahul Chakraborty, Adv.
Mr. Sourojit Dasgupta, Adv.
Ms. Samma Parvin, Adv.
...for petitioner.

Mr. Amitesh Banerjee, Sr. Adv.
Mr. Debangshu Dinda, Adv.
...for respondent.

1. This is an application for appointment of an arbitrator under Clause 8 of the agreement for sale of land dated December 1, 2023. The petitioner decided to sell and dispose of an immovable property, being land measuring around 149 decimals situated at Mouza – Ajahapur, J.L. No.20, P.S. – Jamalpur, on the Tarkeswar-Memari Road, for a consideration of Rs. 3 crores. It is contended that part of the consideration amount has been paid by the respondent. The dispute arose as the entire consideration was not paid. The petitioner allegedly suffered financial crisis and had to borrow money from banks and other lenders to continue his business.

2. It is contended that the losses which were allegedly suffered by the petitioner were adjusted against the part payment made by the respondent. The petitioner submits that the contract has been avoided and upon adjustment being made by the petitioner, the respondent was to receive a little more than Rs.55 lakhs. The respondent has been refusing to receive the said amount.
3. Mr. Banerjee, learned senior advocate appearing for the respondent, submits that out of Rs. 3 crores, approximately Rs.2.44 crores have been paid. The petitioner backed out, and refused to execute the deed. The respondent was and is still ready and willing to perform its obligation under the contract. The petitioner acted in breach of the contract. The petitioner was not entitled to adjust the loss from the money paid by the respondent, against an imaginary loss suffered by the petitioner. Breach of the contract was attributable to the petitioner alone.
4. The allegations and counter allegations of the parties cannot be decided in this proceeding, as these are triable issues. Under such circumstances, upon considering that there is an arbitration clause, which is quoted below, this Court keeps the claims and objections of the parties, including the issue of novation, admissibility and limitation etc. open for adjudication by the learned arbitrator:-

“8. If any dispute or disputes shall at any time arise between the Parties with respect to any provision of this Agreement or the rights or obligations of the Parties hereunder, then the Parties shall attempt to settle such

dispute amicably between them, but in the event of such differences and/or disputes are not capable of being amicably resolved then and in that event the parties have agreed to refer the same to the sole arbitration of a person in whom both parties have full trust and confidence failing whereof each party shall be entitled to nominate and appoint one arbitrator and the said two arbitrators shall appoint the Third and/or Presiding Arbitrator and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act 1996 or any other statutory modification or enactment for the time being thereto in force.”

5. The learned Advocates for both the parties submit that, the first part of the clause provides for appointment of a sole arbitrator and as such, this court may refer the dispute to a sole arbitrator. Such submission is noted.
6. Accordingly, the prayer for appointment of a sole arbitrator is allowed by appointing Mr. Saptansu Basu, Senior Advocate, as an arbitrator, to arbitrate upon the disputes between the parties. 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 Arbitration and Conciliation Act, 1996.
7. The application is disposed of.

(SHAMPA SARKAR, J.)