

ORDER SHEET
AP-COM/289/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SRI GOUTAM ROY
VS
SANJAY ROY

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 30th June, 2025.

Appearance:
Mr. Indranil Munshi, Adv.
...for the petitioner

The Court:

1. Despite service, none appeared when the application under Section 11 was sought to be moved. This Court had directed substituted service. Substituted service had been effected and despite such substituted service, none appears for the respondent.
2. This is an application for appointment of an arbitrator for resolution of dispute which allegedly arose between the parties in respect of a registered partnership agreement dated November 8, 2017. The date of registration of the partnership deed is available from the documents annexed to the application. Clause 24 of the said partnership agreement provides that in case of any difference or dispute between the partners or between one of them and the executors or administrators etc. arising

out of the said deed or the partnership business including division of asset, accounts, valuation etc. shall be referred to an Arbitral Tribunal.

3. The petitioner contends that disputes and differences arose between the parties and by a learned advocate the petitioner issued a demand notice dated November 15, 2024. The allegations are that the profit of business had not been shared with the petitioner although several multistoried buildings had been constructed. Those projects were covered by the partnership agreement. Some of the projects did not receive the completion certificate, mutations had been delayed, the projects remained incomplete etc.
4. The petitioner also expressed the desire to inspect the accounts and conduct an audit of the firm, so that the profits and losses could be equally shared, the unfinished work could be completed and the outstanding dues could be paid to the statutory authorities. The petitioner also asked for the documents, namely, income tax returns, bank statements, audit reports, balance sheet etc. The said notice was delivered to the respondent. However, the respondent did not take any steps.
5. A notice invoking arbitration was issued on January 15, 2025 which was titled as legal notice under Section 11 of the Arbitration and Conciliation Act, 1996. The nomenclature of the notice is not relevant. The petitioner had narrated his grievances and expressed his intention to refer the dispute to arbitration. As the clause provided settlement of disputes by an Arbitral Tribunal, the petitioner also nominated a

learned advocate as his nominee. The said letter was sought to be served upon the respondent on various occasions by the postal authority. The postal track report shows that the item was out for delivery, thereafter kept on hold as the addressee was absent in the premises in question and intimation was served, but the addressee did not take the postal article in spite of intimation. Further, attempt by the postal authority to serve again reflects that the door was locked and intimation was served.

6. Under such circumstances, this Court is of the view, that Section 3(1)(b) of the Arbitration and Conciliation Act read with Section 27 of the General Clauses Act and the presumption under Section 114 of the Indian Evidence Act would be applicable and the service of the letter invoking arbitration should be deemed to be effected.
7. Accordingly, this Court is of the view that the matter can be taken up exparte. The arbitration clause is not in dispute. The claim of the petitioner is with regard to the denial of his profits from the partnership business, lack of information with regard to the profits, accounts, bank statements etc. The claim cannot be said to be deadwood and as such. The dispute is referred to arbitration by an Arbitral Tribunal, as per the clause. Mr. Mrinmoy Mohan Barat, learned advocate shall act as the petitioner's nominee. Mr. Ranjit Singh, learned Advocate (Mob. No.9903786486) shall act as the respondent's nominee and Ms. Suchishmita Ghosh (Chatterjee), learned Advocate (Mob. No.7980857275) shall act as the presiding Arbitrator.

8. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
9. The learned Tribunal shall fix the remuneration as per the Schedule of the Act.
10. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)