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ORDER SHEET
AP/90/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

MOHAN KUMAR PUTATUNDA
VS
M/S. MIDNAPORE DEVELOPER LLP AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th February, 2025.

Appearance:
Mr. Anirban Majumder, Adv.
Mr. Sayantan Mullick, Adv.
...for the petitioner

Mr. Nilanjan Bhattacharjee, Sr. Adv.
Mr. Abhilash Chatterjee, Adv.
...for the respondent no.1

Mr. Hemant Tiwari, Adv.
...for the respondent no.11

The Court: This is an application for appointment of a learned Arbitrator. The petitioner claims to be one of the land owners of the property which was to be developed by the respondent no.1. The petitioner also submits that at present he is the administrator pendente lite of the said property, by the order of a competent Court. According to the petitioner, dispute arose out of the development agreement dated 4th April, 2019. In the course of this proceeding, the heirs of late Tapan Kumar Putatunda, one of the signatories to the development agreement were also brought on record as respondent Nos.11 to 13. The said development agreement contains a dispute resolution clause. Clause 47 of the said agreement provides that, if any dispute or difference arises relating to

the land or construction of the intended building covered by the agreement or relating to the interpretation of any one or more of the clauses and conditions contained in the development agreement, the differences and disputes shall be referred to an Arbitrator. The jurisdiction clause states that Courts at Medinipur, within the District Paschim Medinipur shall have the exclusive jurisdiction to try any dispute between the parties. This is the referral court.

As the dispute could not be resolved between the parties and continued for a considerable period by a letter dated April 22, 2023, the petitioner invoked Clause 47 of the development agreement by issuing a notice not only to the developer, but also to the other owners who did not wish to join in the said notice, with him. The developer responded to the said notice by a letter dated May 14, 2023 and denied the claims of the petitioner. While the petitioner nominated a learned advocate of the High Court as the sole Arbitrator, in reply, the respondent no.1 nominated another advocate of the High Court. Thus, the conduct of both the parties indicate that the parties do not dispute the existence of an arbitration agreement and that they are ad idem on the issue that the disputes must be resolved by said Arbitral Tribunal.

Mr. Bhattacharjee's contention is that, the petitioner had already accepted huge money and nothing was payable. He further submits that the petitioner cannot take advantage of the document which he claims to be a creature of fraudulent misrepresentation. These are matters which have to be decided by the learned Arbitral Tribunal. Arbitrability of the dispute, jurisdiction of the Arbitrator etc. shall not be decided by the referral Court.

The respondent No.11, an heir of late Tapan Kumar Putatunda submit that he does not have any claim against the developer and his name should be

expunged. In my opinion, as the deceased was a signatory, his heirs have been added. The question of expunging their names does not arise in this proceeding. The said heirs may raise such plea before the learned Arbitrator, in the event the petitioner impleads them as respondents in the proceeding.

Under such circumstances, keeping all points on merits including limitation open, this Court appoints Mr. Sagor Bandhopadhyay, learned Senior Advocate (Mob. No.9830068294), as the Arbitrator, to arbitrate upon the disputes. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

AP/90/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)