

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

AP 74 of 2025
ARGHYA MAJUMDER
VS
ANUP KUMAR DAS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 20th May, 2025.

Appearance:

Mr. Arindam Samanta, Adv.

Mr. Amritam Mandal, Adv.

Mr. Madan Mohan Roy, Adv.

.... for the petitioner

Mr. Jit Ray, Adv.

Ms. Shipra Naskar, Adv.

...for the respondent

The Court: This is an application for appointment of an arbitrator under Article XIII of the Development Agreement Cum General Power of Attorney dated April 28, 2021. The petitioner contends that dispute and differences arose between the parties for non-payment of the extra work done by the petitioner. Allegation is that due to the obstructions posed by the respondent, there was delay in completion of the work. Thus, a demand cum notice invoking arbitration was issued on April 7, 2025 and the same was duly delivered upon the respondent. The petitioner prays for appointment of a learned arbitrator. The arbitration clause is quoted below:

“That all the differences and disputes out of the present agreement in connection the said construction of the building at the said property and the meaning thereof together with the purpose thereof including

the liability of the parties along with all other matters in which differences may arise shall be referred to the arbitration in a bid to avoid litigation according to the provisions of the arbitration act in vogue and in that case the appointment of the arbitrators from either side shall be made as per the provision of the arbitration act.”

Learned advocate for the respondent submits that invocation was not duly made. The petitioner had served a demand notice and the notice invoking arbitration was conditional. The law does not permit notice of such nature. The notice invoking arbitration should have contained the nominees of the petitioner. Reliance has been placed on a decision of the Delhi High Court in the matter of ***Shriram Transport Finance Company Limited vs. Narender Singh*** reported in ***2022 SCC OnLine Del 3412***.

It appears that the respondent had approached the District Judge, Hooghly by filing Misc. Case No. 23 of 2025 for interim protection under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner, who is the respondent in the said proceeding was restrained from creating any third party interest in respect of the flats, subject to the condition that the respondent herein, would initiate arbitration proceeding. It was recorded that the order would remain effective, only if the respondent initiated a proceeding for appointment of an arbitrator. The matter was fixed on May 13, 2025. The interim order has been extended.

This court is of the view that a notice invoking arbitration does not have a particular format. The notice has to contain the particulars of the claims and the nature of the dispute. Such details are available from the document itself.

The petitioner called upon the respondent to pay off the claim within fifteen days from receipt of the notice, failing which the petitioner intended to proceed for arbitration by treating the said notice as one under Section 21 of the Arbitration and Conciliation Act, 1996.

Under such circumstances, this court is of the view that once the respondent had received the notice invoking arbitration, had approached the Civil Court for injunction and was successful in obtaining an order subject to the condition that the respondent would invoke arbitration, the objections raised, do not impress this court. The decision in Shree Ram Transport Finance Limited (supra) does not help the respondent, inasmuch as, at the stage of hearing an appeal from an order under Section 34 of the said Act, the Delhi High Court found that the letter intending to refer the dispute to arbitration was addressed to the respondent by the claimant and within seven days therefrom, by a letter an arbitrator was appointed unilaterally. Under such circumstances, the Delhi High Court was of the view that the notice was not a proper notice under Section 21 of the Arbitration and Conciliation Act, 1996.

The other contention of Mr. Ray is that the petitioner's nominee was not mentioned in the notice. This cannot vitiate the notice. The clause provides that appointment of arbitrators from either side shall be made. The intention to refer the dispute to arbitration is available. Such notice was received by the respondent. The respondent could have agreed to the proposal and nominated

a person. It was not done. The Civil Court also directed the respondent to initiate arbitration.

The issues with regard to arbitrability of the dispute, admissibility of the claim and limitation etc. are left open to be decided by the learned Arbitrator.

The clause provides that appointment of arbitrators from either side shall be made as per the provision of law, which means there will be a panel of three arbitrators.

Under such circumstances, the application is allowed by referring the matter to arbitration by appointing Mr. Subhrajyoti Mukherji, learned Advocate, Bar Library Club, as the petitioner's nominee, Mr. Abhidipto Tarafdar, learned Advocate, Bar Library Club, as the respondent's nominee and Mr. Rishab Karnani, will act as the presiding Arbitrator. The learned Arbitrators shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrators shall be at liberty to fix the remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)