

OD-3

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Jurisdiction
ORIGINAL SIDE

AP/100/2025

TUSHAR KANTI JANA
VS
KANCHAN KONWER AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 8th July, 2025.

Appearance :
Mr. Aniruddha Bhattacharyya, Adv.
... for the petitioner.

Mr. Saswata Bhattacharyya, Adv.
Ms. Sima Ghosh, Adv.
... for the respondents.

The Court:-

1. This is an application for appointment of an Arbitrator in terms of Clause 12.16 of the development agreement dated August 3, 2018 entered into between one Tapan Konwer, since deceased and the petitioner's proprietorship firm. The firm was represented by the petitioner in the deed. Tapan Konwer was referred to as the owner and the expression was deemed to mean and include his heirs, executors, administrators, legal representatives, successors-in-office and assigns.
2. Mr. Aniruddha Bhattacharyya, learned Advocate for the petitioner submits that the owner did not abide by the terms and conditions of the agreement and failed to hand over possession despite several requests. Secondly, by a notice dated March 24, 2025, the petitioner

called upon the respondents to fulfil their obligations in terms of the agreement entered into by their predecessor- in- interest. By a letter dated April 27, 2025, wrongly written as April 27, 2024, the respondent refused to acknowledge the said agreement and denied that the petitioner had paid a sum of Rs.9,40,000/- either to the deceased or the respondents. Mr. Aniruddha Bhattacharyya, learned Advocate submits that thereafter, on May 3, 2025 a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued. He pray for reference of the dispute to arbitration.

3. Mr. Saswata Bhattacharyya, learned Advocate for the respondents submits that the agreement did not bear the signature of their predecessor- in- interest. No amount, whatsoever, was received from the petitioner. The existence of the arbitration clause is, thus, denied. All the allegations of the petitioner are false and fabricated. A reply was issued by the Advocate of the respondents to the learned Advocate of the petitioner, but the postal article was refused.
4. Having heard the learned Advocates for the respective parties, this Court finds that the description of owner in the development agreement includes heirs and successors of the owner of the property.
5. The development agreement is a registered document and it carries a presumption of correctness. The said application contains an arbitration clause. Section 40 of the Arbitration and Conciliation Act, 1996 provides that an arbitration agreement shall not be discharged by the death of any party who entered into the said agreement. Under

such circumstances, as the issues raised by Mr. Saswata Bhattacharyya with regard to the validity of the agreement, the allegation of forgery of the signature of their predecessor in the said instrument, issue of limitation etc. are to be gone into by the learned Arbitrator upon evaluation of the evidence to be adduced by the parties. Mr. Aniruddha Bhattacharyya submits that limitation would run from the date of refusal to perform which is April 27, 2025. Time was not prescribed for performance of the agreement. The contention that no money was received by Mr. Tapan Konwer or his heirs is also a matter of evidence. The proof of the signature is a matter which has to be decided by the learned Arbitrator. Respondents are at liberty to pray for an appointment of a handwriting expert and the learned Arbitrator shall decide the said issue as one of the issues in the proceeding.

6. Under such circumstances, the application is allowed by appointing Mr. Debasish Roy, learned Senior Advocate, Bar Association, Room No.2, to arbitrate upon the disputes between the parties, leaving all points open and to be adjudicated by the learned Arbitrator. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
7. This Court has not made any observation on merits. All observations are prima facie.
8. The learned Arbitrator shall fix his/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

9. Accordingly, AP/100/2025 is disposed of.

(SHAMPA SARKAR, J.)

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