

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

AP/134/2025
SHANTI RANJAN PAUL
VS
INDRANI RAY ALIAS INDRANI CHAKRABORTY

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 26th August 2025.

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Ayan Dutta, Adv. ...for petitioner.

Mr. Sayantan Bose, Adv.
Mr. Sarbajit Mukherjee, Adv.
Ms. Manisha Das, Adv. ... for respondent.

1. This is an application for appointment of an arbitrator under Clause 16 of the Memorandum of Agreement dated November 16, 2012.
2. The dispute arises out of the agreement to sell the property to the petitioner. The petitioner contends that time was never of the essence. The first clause provided that the transaction would be complete only after mutation of the premises in favour of the respondent and after sanction of a revised building plan by the Bidhannagar Municipal Corporation. By the said agreement, the petitioner had agreed to acquire the entire unfinished constructed building over the leasehold land under the terms and conditions specified in the said agreement.
3. Clauses 2 and 3 talk about the mode and manner of payment. Clause 4 provides that the respondent would hand over all relevant and original papers and documents in connection with the property and produce all sets of upto date payment receipts regarding yearly outgoings at the time of completion of the transaction that too within a specific period of six months from the date of the Memorandum of Understanding. The Municipal taxes, ground rents and

other outgoings in respect of the said property were also agreed to be paid by the respondent till the date of handing over physical possession. The parties were to complete the entire transaction in terms of the agreement and the arbitration clause provided that in case of any dispute arising therefrom, the parties shall refer the matter to arbitration.

4. Clause 6 further provides that none of the parties shall be entitled to cancel or rescind the agreement. Clause 10 provides that the respondent would be responsible to free the holding from other occupiers, but one M/s. Vidhi Farming Pvt. Ltd. shall be dealt with by the petitioner.
5. According to Mr. Ghosh, learned advocate, the respondent did not inform the petitioner about any mutation being carried out in her name. There was no refusal to comply with the terms and conditions of the agreement and only sometime in June, 2025 the petitioner came to know that mutation had been effected sometime in 2017. It is alleged that third party right was created and the petitioner was resisted from entering into the property. Accordingly, the petitioner approached the department of Urban Development and Municipal Affairs. The petitioner also invoked arbitration.
6. Mr. Mukherjee, learned advocate for the respondent submits that the petitioner slept over his rights for a period of 12 years. The invocation is time barred. When the respondent did not perform the obligations arising out of the agreement since 2012, such inaction or non-action amounted to refusal. The cause of action arose much earlier. Thus, the petitioner could not have waited for so many years, to invoke the arbitration clause. The fact that the invocation was beyond the period of three years from accrual of cause of action, itself would be a reason for this court not to refer the dispute to arbitration. The claim is deadwood.

7. Having considered the rival contentions of the parties, this court finds that the respondent had a reciprocal obligation to mutate her name and the deed provided that the transaction would be completed after the mutation was effected in the name of the respondent and a building plan was obtained from the Corporation. It does not appear from the records that the petitioner was neither made aware that the mutation had been carried out nor that the plan had been obtained from the Corporation. All relevant documents were to be handed over to the petitioner by the respondent. It is the specific contention of the petitioner that the mutation was not made known to the petitioner.
8. Although it is a fact that the agreement was signed in 2012 and the invocation was made in 2015, but the clauses in the agreement required the respondent to undertake certain acts with regard to mutation, obtaining the sanction plan and handing over the relevant documents to the petitioner. Without a trial on evidence, it is not possible for the court to come to a finding that the respondent had either complied with her part of the agreement or had refused to perform the obligations, which would give rise to a cause of action for the petitioner to sue for specific performance.
9. In this case, limitation is a mixed question of fact and law. Moreover, clause 6 of the agreement provides that none of the parties would be at liberty to terminate the contract. If the contract continues to be alive as per the said clause, in my prima facie view, at this stage the dispute cannot be said to be dead wood. Whether, the conduct of the respondent would amount to refusal to perform the agreement by the respondent, must be decided on trial.
10. In such circumstances, this Court is of the view that the application should be allowed. This Court is, prima facie, satisfied with the existence of an arbitration clause. The invocation is available on record. The respondent will be at liberty to raise the question of limitation and arbitrability of the dispute

at the appropriate stage. The respondent will also be at liberty to raise the dispute with regard to the admissibility of the agreement on the ground that the same is inadequately stamped, at the appropriate stage.

11. Under such circumstances, the application is disposed of. This Court appoints Hon'ble Justice Samapti Chatterjee, former Judge of this Court, as the learned 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.

(SHAMPA SARKAR, J.)