

ORDER SHEET

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

AP/182/2025

MAHFUZ AHMED RIZVI & ANR.
VS
SMT. KEYA MUKHERJEE & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th November, 2025.

Appearance:

*Mr. Sujit Banerjee, Adv.
...for the petitioners.*

*Mr. Souradeep Banerjee, Adv.
Ms. Sanjana Sinha, Adv.
... for respondent no.3.*

1. The dispute arises out of an agreement dated May 2, 2012 entered into between one Sri Kamal Kumar Mukherjee, since deceased as an Assignor/Lessor of the First Part, Mr. Mahfuz Ahmed Rizvi and Mr. Nasir Hussain Rizvi of the Second Part and M/s. M. V. Housing Private Limited of the Third Part.
2. Kamal Kumar Mukherjee's heirs are the respondent nos.1 and 2 who have refused service. Under such circumstances, refusal is a good service. The matter proceeds against them.
3. The respondent no.4 is a deity and the owner of the property which was developed by the respondent no.3.
4. According to the petitioner, an agreement to sub-lease dated June 27, 2007, indicates that late Kamal Kumar Mukherjee, as the lessee, had

full right, title and authority to create and/or grant any sub-lease or assign the demised property or any portion thereof including the proposed building to any person or persons whatsoever for such rent or rents and under certain terms and conditions. Such permission was granted to Kamal Kumar Mukherjee by order of the High Court in ATA 7 of 2005. Subsequently a development agreement was entered into between Kamal Kumar Mukherjee and M/s. M. V. Housing Private Limited i.e. the respondent No.3. Allegedly Kamal Kumar Mukherjee, by dint of the order of the Hon'ble High Court in ATA 7 of 2005, entered into the said development agreement with the respondent no.3. The property was developed by the respondent no.3 and Kamal Kumar Mukherjee, thereafter, assigned a flat to the petitioners by an agreement dated May 2, 2012. According to the petitioners, although the petitioners were put in possession of the flat, the registration was not completed. Continuous representations and requests were made, but the respondent no.1, 2 and 3 failed to fulfil their obligation under the assignment agreement. It is submitted that the assignment agreement contains an arbitration clause and the dispute should be referred to arbitration in terms of the said clause.

5. Learned Advocate for the respondent no.3 submits that the respondent no.4 is not a necessary party to this proceeding. The dispute is between the respondent no.3 who is the developer and the heirs of Kamal Kumar Mukherjee (who refused service) with the petitioner. He also submits that the notice under Section 21 of the Arbitration and Conciliation Act, 1996 was not served. Further, as the petitioner no.2

had not signed the assignment agreement, the arbitration clause cannot be invoked by the said petitioner.

6. I have considered the submissions of Mr. Souradeep Banerjee, learned Advocate for the respondent no.3. As Kamal Kumar Mukherjee was a signatory in the deed of assignment, the arbitration clause will apply to his heirs. The deed of assignment is not in dispute. The arbitration clause is also not in dispute. Whether the arbitration clause can be invoked by the petitioner no.2, raises a question as to whether a non-signatory can seek appointment of an arbitrator. This issue can be finally decided by in arbitration. When a party is intrinsically linked with the performance of the underlying contract the said party can invoke the arbitration clause. This is my prima facie view. In the deed of assignment, the petitioner No. 2 was a party of the second part. Whether the respondent No.4 is a necessary party will also be decided in the arbitral proceeding, on the basis of materials on record and the order of the High Court in ATA 7 of 2005. Prima facie, the petitioner No.2 was an assignee of the flat and the respondent No. 4 is the owner of the property. The petitioners seek registration of the assignment agreement by which the flat had been assigned to the petitioners but registration is awaited. All issues with regard to admissibility of the claims, limitation etc. are left open to be decided by the learned Arbitrator. With regard to the non-service of notice under Section 21 of the Arbitration and Conciliation Act, 1996, this Court finds that a notice was sought to be served by the postal authorities, but the respondent no.3 could not be traced and the postal endorsement

indicates 'left'. Presumption under Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 and the fiction of deemed service will be applicable in this case. The postal authority, after making reasonable enquiry at the last known place of business of the said respondent, could not deliver the notice under Section 21 upon the respondent no.3, although the respondent no.3 received service of this application at the same address.

7. In such circumstances, the contentions on behalf of the respondent no.3 is not accepted.
8. This application is allowed, keeping all issues open. Mr. Sukanta Chakraborty, learned Advocate (9836337012) is appointed as the Arbitrator, to arbitrate upon the disputes between the parties.
9. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.
10. AP 182 of 2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)