

OCD-3

AP-COM/878/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

MRINAL KANTI MAJUMDER
VERSUS
M/S. MND CONSTRUCTION

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 21st January, 2025.

Appearance:
Mr. Narayan Chandra Ghosh, Adv.
. . .for the petitioner.

The Court: Affidavit of service is taken on record.

None appears before this Court on behalf of the respondent. On January 2, 2025, when the matter was taken up for hearing, also none appeared. This Court directed service by way of paper publication in two widely circulated newspapers, one in English and one in the local language of the respondent. The affidavit of service indicates that such paper publication has been made. Despite such paper publication, the respondent is not before the Court. Under such circumstances, the matter is taken up in the absence of the respondent.

The petitioner prays for appointment of an Arbitrator on the strength of a Dispute Resolution Clause in the Development Agreement dated August 5, 2022. According to the Dispute Resolution Clause, all disputes would be adjudicated within the meaning of the Arbitration and Re-Conciliation Act, 1976. The petitioner relies on several communications and an order passed by the learned District Judge at Alipore. According to the petitioner, the learned District Judge

had injuncted the respondent from raising construction and had disposed of the application for injunction by directing the petitioner to take appropriate steps as per law. Accordingly, the petitioner issued a notice on September 25, 2024 calling upon the respondent to compensate the petitioner within fifteen days as per the agreement, failing which the petitioner would be constrained to initiate judicial proceeding. This, in my view, is not a notice in terms of Section 21 of the Arbitration and Conciliation Act, 1996. The letter does not indicate any intention of the petitioner to commence arbitration. The petitioner had not expressed an inclination to refer the dispute to arbitration.

Under such circumstances, the application is dismissed. The petitioner is at liberty to take appropriate steps by issuing proper notice.

(SHAMPA SARKAR, J.)

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