

oc-48

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

AP-COM/968/2024
REETA TREHAN
VS
M/S AKSHARA CONSORTIUM AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th November, 2025.

Appearance:
Mr. Avirup Mondal, Adv.
Mr. Arindam Paul, Adv.
Ms. Debdipta Sen, Adv.
Ms. Debarati Das, Adv.
Ms. Sohini Choudhury, Adv. ...for petitioner.

Mr. Zeeshan Haque, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Sharfaa Ahmed, Adv. ...for respondents.

The Court: - This is an application for appointment of an Arbitrator on the basis of clause 14 of the agreement dated December 12, 2013. The said agreement for sale was entered into between the petitioner and the respondents. Learned advocate for the respondents has filed GA (COM)/1/2025, which is in the nature of an objection to the maintainability of this application. The said GA (COM)/1/2025 is treated as on the day's list and also treated as the affidavit in opposition to the application for appointment of an Arbitrator.

Clause 14 of the arbitration clause provides that all disputes and differences between the parties, relating to or connected with the flat agreed to be sold to the petitioner by the respondents, would be referred to a sole Arbitrator. It appears that the petitioner filed a complaint case before the consumer forum being CC/279/2014. The said complaint case was withdrawn. Thereafter, the petitioner filed money suit no.12/2016. The said

suit was withdrawn by order dated March 10, 2022. However, the learned Civil Court did not grant liberty to the petitioner, to file afresh on the self-same cause of action. The said order was challenged by the petitioner, in a civil revisional application before this court and the Hon'ble High Court, after elaborate discussion of the law and the findings of the learned civil court, set aside the order, thereby, allowing the parties to refer the dispute to arbitration upon taking note of clause 14 of the agreement entered into between the parties. Aggrieved by the said order, the respondents filed a review and the same was dismissed with reasons.

The application invoking arbitration was filed on November 26, 2024. However, the matter was adjourned for a considerable time on the ground that the review application was pending. As of today, the issue as to whether the petitioner would have the liberty to invoke the arbitration clause has attained finality. The leave which was not granted by the learned civil court when the suit was dismissed as withdrawn, has been granted by the High Court. On the strength of the order of the High Court, the petitioner now prays that this application be allowed and referred to arbitration.

Mr. Haque, learned advocate for the respondents vehemently opposes the prayer for referring the dispute to arbitration on the ground that the petitioner had accepted the jurisdiction of the civil court. The moment the suit was filed, the petitioner waived the right to invoke arbitration. The cause of action arose sometime in 2016, accordingly, the money claim has become time barred by now. He relies on a decision of the Kerala High Court in the case of **Beena Thomas vs. Smitha Jody**, reported in **2018 SCC OnLine Ker 1631**, with regard to the issue of waiver and submits that when the plaintiff knowingly approached the civil court and continued the suit for a considerable period of time and the defendant also contested the proceeding, the question of referring the dispute to arbitration would not arise as the arbitration clause stood waived by conduct of the parties.

Reliance has been placed on the decision of ***Arif Azim Company Limited vs. Aptech Limited***, reported in **[2024] 5 SCC 313**, in support of the contention that the referral court had the duty to weed out ex facie dead and time barred claims. Relying on paragraph 78 of the said judgment, Mr. Haque asserts that the period of limitation to file a money suit would be three years from the date of denial to refund or pay. The respondents denied to pay back the amount by a letter dated May 8, 2016. Thus, the cause of action arose on May 8, 2016 and this arbitration petition was filed in November, 2024. Relying on the provision of section 14 of the Limitation Act, Mr. Haque submits that the said section will not be applicable as it is not the petitioner's case that the petitioner was pursuing her remedy before a wrong forum. It was not a case that the suit was allowed to be withdrawn on the ground that the court lacked the jurisdiction to entertain the suit and that the appropriate forum for the petitioner to pursue her remedy, would be the Arbitral Tribunal, duly constituted under clause 14 of the agreement. Reference is further made to the provisions of Order 23 Rules 1 and 2 of the Code of Civil Procedure in support of the contention that unless the court was satisfied that the suit would fail for some defect or that the court had no jurisdiction to entertain the same, the question of granting liberty to file afresh on the self-same cause of action would not arise. Further reference has been made to Order 23 Rule 2 of the Code of Civil Procedure to assert that the laws of limitation will be equally applicable in this case, as if, the first suit had not been filed. Thus, Mr. Haque prays for dismissal of the application.

Although the petitioner submits that the written statement has not been filed and the respondents had not contested the suit, Mr. Haque submits that the order of the Hon'ble High Court records filing of the written statement and that both the parties submitted to the jurisdictional court.

The fact that the petitioner had filed the suit and withdrawn the same without being granted any liberty, is on record. Such order was

challenged before the High Court in a revisional application. A competent court had set aside the order of the learned trial judge and had clearly held that the consequence of withdrawal of the suit should have been grant of liberty to file afresh on the self-same cause of action by involving arbitration. His lordship took specific note of Clause 14 of the arbitration agreement and held that the petitioner, being aged lady, may not have been acquainted with law and may have filed the proceeding in a wrong forum. She should not be non-suited. Not allowing her to pursue her remedy in arbitration, as per the agreement entered into between the parties, would be unjust. All the parties were *ad idem* that, in case of any dispute arising out of the agreement for sale, the parties would refer the dispute to arbitration.

The objection of Mr. Haque that the provision of Order 23 Rule 1 of CPC would debar invocation of the arbitration clause, is answered against the respondents. At this stage, in view of the fact that the civil revisional court already granted liberty to the petitioner to invoke arbitration, upon setting aside the order of the learned trial judge, Order 23 Rule 1 will not come into operation. The petitioner was granted liberty to withdraw the suit and proceed afresh. Parties were permitted to invoke arbitration.

With regard to the issue of limitation, this Court is of the view that section 14 of the Limitation Act applies in arbitration proceedings. Whether the provision of Order 23 Rule 2 of CPC would apply or not, shall be decided by the Arbitrator. Whether the petitioner deliberately filed the suit to harass the respondents or had pursued the suit under a misconception of law, will be decided by the learned Arbitrator. The Arbitrator is competent to decide whether the petitioner had pursued her remedy bona fide in the wrong forum and had withdrawn the proceeding from the said forum upon coming to know that the proceeding would fail in view of the existence of an arbitration clause. Such issue will have to be decided on evidence being led by both the parties. Whether the petitioner was abusing the process of court or whether

the petitioner was forum shopping are matters of trial, which are to be gone into by the learned Arbitrator. The decision in **Arif Azim Company Limited [supra]** on the court's power to weed out ex facie time barred claims, shall not apply in the facts of the case, in view of the factual background which has been discussed hereinabove. It is true that the liberty granted by the High Court to approach the Arbitrator, cannot be an absolute liberty and the same shall be subject to the relevant laws. However, the issue of limitation or any other objection raised by Mr. Haque, can be decided at the appropriate stage. The question is, whether the referral court should go into these intricate issues which are to be decided on evidence or whether these issues should be left open to be decided by the learned Arbitrator. In my opinion, all the objections raised by Mr. Haque in **GA/Com/1/2025** shall be available to respondent, to be agitated at the appropriate stage before the learned Arbitrator. It is also true that the learned Arbitrator can rule on the jurisdiction and arbitrability apart from admissibility and limitation. The respondents are also at liberty to approach the Arbitrator on such issues. Moreover, if the learned Arbitrator finds that the respondents had been unnecessarily dragged into frivolous proceeding, the Arbitrator also has the jurisdiction to award cost. Thus, the respondents can raise all points before the learned Arbitrator including the frivolity of the claim.

Under such circumstances, this application is allowed by appointing Mr. Ishan Saha, learned Advocate, Bar Library Club, as the learned Arbitrator. All questions are left open to be decided by the learned Arbitrator.

This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

AP-COM/968/2024 is accordingly disposed of.

(SHAMPA SARKAR, J.)

S. Mandi/pkd.