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

AP/70/2025

NARAYAN BASU AND ORS
VS
DR AMITAVA CHAKRAVARTY ALIAS DR AMIT CHAKRAVARTY

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th February, 2026.

Appearance:
Mr. Arnab Roy, Adv.
Mr. Satyam Mukherjee, Adv.
Mr. P. S. Ghosh, Adv.
Mr. Saibal Rakshit, Adv. ...for petitioners.

Mr. Gopal Chandra Ghosh, Sr. Adv.
Mr. R. Mondal, Adv.
Ms. P. Samanta, Adv.
Ms. Suravi Ghosh, Adv. ...for respondent.

The Court: The petitioners/trustees, pray for appointment of an arbitrator in terms of clause 6 of the lease agreement dated 20th June, 2003. The agreement was entered into between the respondent and the trust.

The respondent is the lessor and the trust is the lessee. The lease was for a period of 21 years. Under the said clauses, the lessee had the reserved the right to construct a building on the vacant portion of the demised land, in addition to the existing construction. Clause 6 further provided that in case such additional construction was made, the lessor shall have a right of pre-emption and upon exercising this right, the building constructed by the lessee on the demised land shall be taken over by the lessor after expiry of the term of the lease, upon exercise of an option of preemption by valuing the property. The valuation shall be made by the lessor on the basis of the construction, less depreciation. In the event of any difference between the parties on the value of the construction, the matter in dispute shall be referred to an arbitrator in case of agreement or to a panel of arbitrators in case of disagreement.

Mr. Roy, learned advocate for the petitioner submits that the petitioners have approached this court, as the respondent has not made any valuation of the property. A suit has been filed by the respondent for eviction, arrear rent and mesne profit against the trust. The averments in the plaint clearly indicate that the respondent wanted to run the college from the said premises and in doing was willing to use the building to facilitate and run the college. It is further submitted that the respondent had acknowledged the existence of the arbitration agreement. In paragraph 19 of the said plaint, inter alia, it was stated that after determination of the lease on June 19, 2024, the respondent had asked the petitioners to quit and vacate the said premises on several occasions. In retaliation, some of the trustees initiated a proceeding under section 9 of the Arbitration and Conciliation Act, 1996, which was pending before the learned Additional District Judge, Third Court at Barasat being Misc. Case No.47 of 2024. It is further submitted by him that an offer was made to the respondent as to the valuation at which the property would be handed over, by a letter dated July 16, 2024. The valuation was made by the petitioners. However, the respondent refused to acknowledge such offer and ignored the valuation made by the petitioners. Under such circumstances, finding no other alternative, and as the mechanism under clause 6 of the agreement had failed, this court has been approached under section 11(6) of the Arbitration and Conciliation Act, 1996.

Mr. Roy relies on a decision of the Hon'ble Apex Court in the case of Office for Alternative Architecture vs. Ircon Infrastructure and Services Ltd., in support of the contention that while considering an application for appointment of an arbitrator, the referral court is only required to restrict its satisfaction to the existence of an arbitration clause. The scope of the referral court is limited and the referral court should not conduct a mini trial in order to ascertain whether any genuine dispute exists between the parties or not.

Mr. Ghosh, learned senior advocate for the respondent/lessor submits that the lease expired by efflux of time. The petitioners failed to hand over the vacant possession. The respondent was constrained to file a suit for eviction. The suit is being contested by the petitioners. Thus, the question of implementation or enforcement of clause 6 and the arbitration clause therein does not arise in view of the stand taken by the petitioners in the suit.

Clause 6 of the said agreement is quoted below :

“6. The lessee shall not assign or transfer the demised land or part thereof and the building without prior written permission of the lessor. But the lessee shall have the right to construct building on the vacant portion of the demised land at their own cost for providing additional accommodation, which may be required by the lessee for the development of the Institute. In case of such additional construction the lessor shall have the right of pre-emption and upon the exercise of this right the building constructed by the lessee on the demised land shall be taken over by the lessor after expiry of the term of the lessee at a valuation of the building, which may be constructed by the lessee made by the lessor on the basis of construction less depreciation. In the event of difference between the parties as to the value of such building the matter in dispute shall be referred to an arbitrator if both the parties can agree upon or otherwise to two arbitrators, one to be appointed by each party with an umpire. The award of the arbitrators shall be final and binding on both the parties.”

The said clause consists of various components. Invocation of the arbitration clause can be made when the following conditions exist. [a] the lease has expired; [b] delivery of possession after expiry of the lease by the trust; [c] lessor exercising the option to take over the construction made by the lessee; [d] valuation by the lessor of such construction and (e) difference of opinion in the valuation of the lessor and the valuation made by the lessee.

In my opinion, the stage has not yet arrived as the above factors do not exist. This court cannot allow the application for reference of the dispute

in the vacuum. It is not the case of the petitioners that they are willing to handover possession by vacating the premises, if the respondent tenders the price of the construction made by the trust.

When the suit is proceeding and there is no decree for delivery of vacant possession, the question of any dispute and difference in the valuation of the property between the parties does not arise. The application is premature. Thus, the application is dismissed. However, dismissal of this application will not prevent the parties from availing of the arbitration clause under clause 6 of the agreement at the appropriate stage.

The suit court will not be influenced by this order.

(SHAMPA SARKAR, J.)

pkd.