

OD-36

ORDER SHEET

AP/861/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

RANAJIT GUHA ROY AND ANR.
VS
SANKAR KUMAR HALDER

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 27th August, 2024.

Appearance:

*Mr. Rabindra Kumar Mitra, Adv.
Mr. Sourjya Das, Adv
Ms. Poulami Bhowmick, Adv.
...for the petitioners*

*Mr. Swapan Kr. Mazumdar, Adv.
Mr. Saptarshi Mazumdar, Adv.
Mr. Nikhil Kr. Roy, Adv.
Mr. Abhik Chitta Kundu, Adv.
...for the respondent*

The Court: The petitioners have preferred the present application under Section 11 of the Arbitration and Conciliation Act, 1996 for resolution of disputes raised by the petitioners within the ambit of a development agreement entered into between the petitioners/developer and the respondent/land owner.

Learned counsel for the petitioners places reliance on several clauses of the agreement to impress upon the Court that in terms of the clauses thereof, disputes arising within the ambit of the same are subject to reference to arbitration.

Learned counsel places reliance on two notices issued by the respondent, in particular, that dated November 29, 2022, to point out that

the development agreement dated June 24, 2020, which contains the arbitration clause, was specifically relied on by the respondent himself.

In fact, the existence of the said document has been admitted and the same relied on by the respondent time and again in several complaints lodged by him before different forums.

As such, it is argued that the stand taken by the respondent now is palpably *de hors* the law and contrary to his own previous stand.

Learned counsel appearing for the respondent objects to the maintainability of the present application under Section 11. It is submitted that under Section 2(e) read with Section 11(3A) of the Arbitration and Conciliation Act, 1996, "Court" defined in the 1996 Act has to be the court having original territorial jurisdiction over the area covering the subject-matter of the dispute. Since the present dispute falls outside the territorial jurisdiction of the Original Side of this Court, it is argued that this Court does not have determination to take up the matter.

Secondly, it is argued that the respondent belongs to a Scheduled Caste and has lodged several cases which are pending before different forums, including the Scheduled Caste Commission.

That apart, objections have been raised by the respondent and complaints made before different municipal authorities and criminal forums. None of these disputes, it is argued, can be the subject-matter of arbitration.

Thirdly, it is contended by the respondent that the signature of the respondent was obtained by misrepresentation and fraud. Taking advantage of the marginalized social status of the respondent, it is alleged that the agreement in question was manufactured by the petitioners.

That apart, it is argued that the provision in the said agreement relating to refund of amounts received by the respondent/land owner is absurd and could not have found place in an ordinary development agreement.

Learned counsel for the respondent also relies on Section 7 of the 1996 Act and argues that the arbitration clause can be by way of a separate arbitration agreement or incorporated as a clause in an agreement. Since the parent agreement itself and its existence is disputed in the present case, it is submitted that there cannot be any reference to arbitration.

However, the arguments made by the respondent are not tenable for the following reasons:

Insofar as jurisdiction is concerned, there is a difference between “Court” as contemplated in Section 2(1)(e) of the 1996 Act and “High Court” and “Supreme Court” as mentioned in Section 11 of the said Act. Whereas most of the provisions of the 1996 Act, such as Sections 9, 36, 34, 37, etc, speak about “Court”, which is the principal Original Civil Court having jurisdiction, Section 11 contemplates the Supreme Court and/or the High Court and not “Court” as defined in Section 2(1)(e). Since there is only one High Court in the State of West Bengal and as such, this Bench, being the designate of the Chief Justice, has determination to take up Section 11 matters, such argument on the ground of jurisdiction cannot but be turned down.

Insofar as pending criminal cases, cases pending before municipal authorities as well as the Scheduled Caste Commission or other Courts/forums under special statutes are concerned, the present dispute

sought to be raised does not have any bearing on the same. Substantially, the petitioners' claims are of the nature of civil disputes emanating out of the development agreement between the parties. Insofar as the criminal cases and other cases, if any, pending under special statutes are concerned, those will be decided by the appropriate forums having jurisdiction in law. Such disputes, however, have no connection with the dispute sought to be referred to arbitration at present, which are civil in nature.

As to the third objection as to the signature of the respondent being obtained by fraud/misrepresentation, the same can be decided by the Arbitrator. It is now well-settled that in view of the provisions of the 1996 Act, the arbitral tribunal, like a civil court, can also resort to appointment of experts if intricate questions requiring expert opinion, including questions of fraud/misrepresentation, are concerned.

However, such an exercise cannot deter the reference to arbitration at this stage. The High Court, under Section 11 of the 1996 Act, does not act as an adjudicatory forum but is merely a notch above an administrative forum. It is beyond the charter of the Section 11 court to adjudicate on merits the disputes raised by the respondent on the allegation of the agreement-in-question being obtained by fraud/misrepresentation. Even the challenge to the veracity of the agreement containing the arbitration clause on the ground of fraud/misrepresentation involves adjudication on merits upon taking evidence, which is best left to the arbitral tribunal to decide.

As to the perceived absurdity of the provisions of the agreement, it is open to the respondent to thrash out the same as well before the Arbitrator, as and when appointed.

However, none of the objections taken by the respondent take anything away from the fact that the dispute sought to be raised and referred to arbitration now is purely civil in nature and comes within the ambit of the arbitration clause of the agreement between the parties. Insofar as the veracity and validity as well as the existence of the agreement is concerned, it will be open to the learned Arbitrator, when appointed, to decide on such issues, if raised by the parties.

As the disputes are otherwise arbitrable, there cannot be any hindrance to reference of the same to an Arbitrator.

Accordingly, AP/861/2023 is allowed, thereby appointing Mr. Shounak Mukhopadhyay, a member of the Bar Library Club, as the sole Arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 being obtained from the said learned Arbitrator.

The learned Arbitrator shall decide on his own remuneration in consultation with the parties within the ambit of the provisions of the 1996 Act and the Fourth Schedule thereof.

It is made clear that it will be open to the learned Arbitrator to decide on all the issues raised by the parties on merits and to consider his remuneration and the ratio in which the same shall be shared, in the light of the respective financial condition of the parties.

(SABYASACHI BHATTACHARYYA, J.)