

OD-13

ORDER SHEET

AP/163/2024

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

TAPAN KUMAR SAMADDAR
VS
SAGAR JAGDISH DARYANI AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 10th September, 2024.

Appearance:

Ms. Meenakshi Manot, Adv.

Ms. Shreya Choudhary, Adv.

...for the petitioner

Mr. Raunak Satpathy, Adv.

...for the respondents

The Court: Learned counsel for the respondent seeks an adjournment and a reference to mediation.

Learned counsel for the petitioner opposes such prayer and submits, on instruction, that previous efforts at mediation and settlement have failed and as such the petitioner insists upon the matter being referred to arbitration.

Also, it transpires from the order dated September 6, 2024 that on the said occasion as well, learned counsel who appears today on behalf of the respondent had submitted that he would take instruction as to whether he would be engaged on behalf of respondent no.2. As such, no further adjournment ought to be granted to the respondent.

Since the petitioner categorically submits that he is not agreeable to any further efforts at mediation or settlement since such efforts have failed in the past, the Court cannot force the petitioner to enter into a mediatory process. Accordingly, the present application under Section 11 of the Arbitration and Conciliation Act, 1996 is taken up for hearing on merits.

It transpires that a composite reference is sought by the petitioner from two interconnected agreements, one a lease agreement and the other an amenities agreement.

The composite amount to be payable by the respondent per month exceeds the ceiling for bringing the matter within the ambit of the Rent Control Act prevalent in West Bengal i.e., the West Bengal Premises Tenancy Act, 1997.

Hence, prima facie, the matter lies beyond the domain of the Rent Control Act, which is a special statute designating forums/courts, and is accordingly arbitrable. On a prima facie and conjoint reading of the two agreements, it transpires that they are inextricably linked and the total amount which is payable for enjoyment of the property is, as per the extant law, to be deemed to be the rent/occupational charge, taking the matter accordingly beyond the ceiling limit of the Rent Control law.

Since the rent agreement contains an arbitration clause and the amenities agreement, in Clause 7, provides that the provision of the latter agreement is also to be read and construed in conjunction with the provisions of the rent agreement dated December 3, 2014 (which has been treated and referred to in the latter agreement to be the “main agreement”),

there has to be a composite reference of disputes arising out of both agreements to arbitration.

Learned counsel for the respondent takes several objections on merit. However, it is well-settled that the Section 11 Court cannot enter into the merits of the disputes between the parties.

Accordingly, AP/163/2024 is allowed, thereby appointing Mr. Tanmoy Mukherjee, a member of the Bar Association (Mobile No. 9874218610), as the sole Arbitrator to resolve the disputes between the parties, subject to a declaration being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said learned Arbitrator.

The learned Arbitrator shall fix his own remuneration in consultation with the parties and within the framework of the 1996 Act and its Fourth Schedule.

All issues are left open to be decided on merits by the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)