

In the Court of District Judge, South 24-Parganas at Alipore

Misc. Case (Arb.) No. 70 of 2024

Present : Sri Subhradip Mitra (WB01129) District Judge

South 24 Parganas at Alipore

Gangapurna Projects LLP

... Petitioner

Vs.

Smt. Dhira Mitra & Others.

... Respondents

Order No. 03, dated 04.10.2024

The record is taken up by virtue of a put up petition filed on behalf of the petitioner.

The application under Section 9 of the Arbitration and Conciliation Act is taken up for hearing.

The contention of the petitioner is that the petitioner is a reputed LLP incorporated under the LLP Act and running its business of development and construction work. One Sailendra Nath Palit was the original owner in respect of the suit premises. Said Sailendra Nath Palit died on 04.07.1933 and executed an Indenture of Lease in favour of Sri Pravash Chandra Mitter. Said Pravash Chandra Mitter executed a Will wherein Pravash Chandra Mitter appointed Kamal Chandra Chunder, Bimal Kumar Mitter, Sudhangshu Kumar Mitter and Santosh Kumar Mitter as joint executors of the last Will and Testament dated 02.08.1929. The joint executors obtained probate on 13.03.1994 in favour of his four sons. Bimal Kumar Mitter, being one of the sons of said Pravash Chandra Mitter was enjoying the peaceful and undisputed possession of the suit property and he died intestate on 07.09.1991 leaving behind his son, Gautam Mitter, as his only legal heir. Said Gautam Mitter

entered into a Memorandum of Understanding (MOU) on 06.02.2024 in respect of the suit property and as per the said MOU, the terms and conditions shall be binding on the heirs, successors, legal representatives and assigns of said Gautam Mitter. It was agreed between the parties that within three months, the agreement shall be executed in between both the parties. As per Clause 2(v) of the MOU, it was agreed by and between the parties that the petitioner will take on all the related formalities of dealing with its process referring to due diligence process, construction of boundary wall and demolishing the existing cantilever overbridge in the suit property. At the time of signing the said MOU, the petitioner paid a sum of Rs. 51,00,000/- and after getting the same, said Gautam Mitter put his signature. Subsequently after execution of the MOU, said Gautam Mitter died intestate leaving behind the opposite parties as his legal heirs and, therefore, the petitioner had to communicate with the opposite party no. 1. The opposite party no. 1 never showed any interest to comply with the terms and conditions of the MOU. Lastly, in the month of May, 2024, the petitioner approached the O.P. no. 1 to execute the Assignment Agreement, but the opposite parties violating Clause 5 of the said MOU asked the petitioner to disburse almost the entire amount (Rs. 8 crores) before execution of the Assignment Agreement. The petitioner again on 09.08.2024 approached the O.P. no. 1 to execute the Assignment, however, the opposite parties did not respond. The petitioner has recently come to know that the opposite parties with *mala fide* intention are trying to create third party interest over the suit premises. The petitioner then sent a notice, dated 30.08.2024, to the O.P. no. 1 for executing the Assignment Deed otherwise the petitioner will have to take legal recourse, but the opposite parties never showed any initiative. It is the contention of the petitioner that as per Clause 9 of the MOU dated 06.02.2024, all disputes and differences between the parties shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. The petitioner apprehends that if an interim protection is not granted in

favour of the petitioner, then the opposite parties shall transfer and alienate the suit property to any third party. As such, the petitioner has filed the instant case under Section 9 of the Arbitration and Conciliation Act, 1996.

Heard the submission of the Ld. Advocate for the petitioner.

Perused the materials available on record viz. Memorandum of Understanding, dated 06.02.2024, Account Statement of ICICI Bank, Mail and Letter, Articles of Agreement dated 03.12.1957, copy of Lease Deed dated 14.07.1933, copy of K.M.C Tax Bill, etc.

Upon perusal of the Memorandum of Understanding, dated 06.02.2024, it, *prima facie*, appears that the petitioner and the husband of opposite party no. 1, Gautam Mitra, entered into an agreement and it further appears that within three months, the definite assignment agreement shall be executed in between the parties and if the deal is not going through within three months, then the First Party shall refund the money within 15 days from the date of expiry of three months. The petitioner had paid Rs. 51 lacs to Gautam Mitter, since deceased, the predecessor-in-interest of the opposite parties. It further appears that the petitioner sent letter dated 30.08.2024 to the opposite party no. 1 for execution and completion of the deal. Clause 9 of the said MOU talks of any disputes and difference arising in between the parties to be referred to arbitration under Arbitration and Conciliation Act, 1996. The schedule property is within the jurisdiction of this Court.

Having considered the materials on record, it appears that the petitioner has been able to make out a *prima facie* case in its favour and the balance of convenience and inconvenience is also in favour of the petitioner. If, at this stage, an ad-interim order in preventive nature is not granted in favour of the petitioner then the petitioner will suffer from irreparable loss and injury.

Hence,

it is,

ORDERED

that the prayer for an order of ad-interim injunction is allowed in favour of the petitioner until hearing the respondents for a restricted period with a direction upon the respondents restraining them from creating any third party interests in respect of the schedule property till **12.11.2024** on further condition that the petitioner shall approach the appropriate authority for initiation of arbitration proceedings by appointment of an Arbitrator **within ninety (90) days** from the date of this order in terms of Section 9(2) of the Arbitration and Conciliation Act, 1996.

Issue notice.

Fix **12.11.2024** for S/R and A/D.

Dictated & corrected by me,

Sd/- Sri Subhradip Mitra

District Judge

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