

IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION

IA No. GA/1/2023  
In  
CS/150/2023  
POOJA JAISWAL  
VERSUS  
SUNIL KUMAR SHAW AND ANR.

BEFORE:  
The Hon'ble JUSTICE ARINDAM MUKHERJEE  
Date: 2<sup>nd</sup> August, 2023.

Appearance:  
Mr. Rudraman Bhattacharya, Adv.  
Mr. Rohit Banerjee, Adv.  
Mr. Satyaki Mukherjee, Adv.  
Mr. Aditya Mondal, Adv.  
Mr. Suryaneel Das, Adv.  
Mr. Chiranjit Pal, Adv.  
For the petitioner/plaintiff.

Mr. Anirban Ray, Adv.  
Mr. Arup Nath Bhattacharyya, Adv.  
Ms. Munmun Ganguly, Adv.  
Mr. Varun Kothari, Adv.  
Ms. Sayani Das, Adv.  
Mr. Arya Bhattacharyya, Adv.  
For the defendants/respondents.

The Court :- This is an application, inter alia, for injunction filed by the plaintiff/petitioner. The plaintiff/petitioner alleges that the plaintiff/petitioner is operating a bar-cum-restaurant under the name and style of "Cheers N Beers" from premises No. 11, Chittaranjan Avenue, Kolkata-700 072 as a sole proprietor thereof. The plaintiff/petitioner says that she holds a valid trade

licence, excise licence and all other requisite licences for operating the bar. The plaintiff also claims to hold a Goods and Service Tax (GST) registration for running of the said business.

The plaintiff/petitioner further says that on 18<sup>th</sup> May, 2023 the plaintiff/petitioner all on a sudden received a copy of the petition filed in AP No. 313 of 2023 before this Court from the defendants/respondents. It appeared to the plaintiff/petitioner that the same has been filed under the provisions of Section 9 of the Arbitration and Conciliation Act, 1996.

The basis of such application under Section 9 of the 1996 Act according to the plaintiff/petitioner is a partnership deed dated 18<sup>th</sup> July, 2022 which contains an arbitration agreement. The plaintiff/petitioner says that she had never entered into any partnership with the defendants/respondents for running the business under the name and style of "Cheers N Beers". The arbitration agreement is a product of fraud and a fabricated document. There is as such no arbitration agreement. No application under Section 9 could have been made.

The plaintiff/petitioner also says that the defendants/respondents have not been able to produce the original partnership deed. The defendants/respondents have relied upon a notarized copy thereof. Apart from its validity, authenticity and existence, the plaintiff/petitioner says that the document relied upon by the defendants/respondents, as the partnership deed is also not properly notarized. The said document, according to the plaintiff/petitioner, is a fake document and on the strength thereof neither any

Section 9 application nor any arbitration proceeding can be initiated or proceeded with.

The plaintiff further says that in the application under Section 9 of the 1996 Act, the defendants/respondents have alleged about perpetration of fraud. Once such an allegation is made the matter cannot be resolved through arbitration as the Arbitrator does not have the competence to look into fraud. The plaintiff/petitioner also alleges that the defendants/respondents have not invested any money far less a sum of Rs. 66,53,000/-.

The defendants/respondents, however, has a different version with regard to the partnership deed. The defendants/respondents say that the original of the partnership deed is lying with the plaintiff/petitioner. The defendants/respondents were only favoured with a notarized copy thereof which the defendants/respondents are in a position to produce and rely upon.

Admittedly, the Section 9 application has been filed before institution of the suit. The defendants/respondents have the right to proceed with the Section 9 application wherein the plaintiff/petitioner can make her submission regarding fraud and non-existing of the arbitration agreement to prevent any interim order being passed therein and also seek dismissal of the application. On the contrary, if any interim order as prayed for by the plaintiff is passed in this application, the same is likely to lead to multiplicity of judicial proceedings and proved the defendants/respondents from proceeding with the Section 9 application or refer the disputes to arbitration.

In the aforesaid facts and circumstances, the prayer for ad interim order made by the plaintiff/petitioner is refused. Refusal of interim order, however, not effect the plaintiff/petitioner's right to claim appropriate orders in the Section 9 proceedings or in a proceeding for appointment of Arbitrator on the selfsame allegations. The matter, however, requires further scrutiny. Let affidavits be filed.

Affidavit-in-opposition by 18<sup>th</sup> August, 2023; reply, if any, by 31<sup>st</sup> August, 2023.

Let this matter appear in the monthly list of September, 2023.

(ARINDAM MUKHERJEE, J.)