

24.06.2021
KC(1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
F.M.A.T. 356 of 2021
Huldibari Industries and Plantation
Company Ltd.
-versus-
Haldibari Tea Manufacturers LLP
With
CAN 1 of 2021
(Circuit Bench at Jalpaiguri)
(Via Video Conference)

Mr. Jishnu Choudhury,
Mr. Padam Khaitan,
Ms. Sreya Singh.....For the appellant.

Mr. Srijib Chakraborty,
Mr. Rohit Banerjee,
Ms. Sunny Nandi.....For the respondent.

This appeal from the judgment and order of the learned Commercial Court, Siliguri dated 9th April, 2021 allowing an application of the respondent under section 9 of the Arbitration and Conciliation Act, 1996, is formally admitted.

In the impugned order, the appellant company and its functionaries have been restrained, “from creating any third-party interests in the tea garden and the other properties as described and detailed in the schedule to the agreement for assignment till the conclusion of arbitral proceedings, subject to section 9(2) of the Arbitration and Conciliation Act, 1996”.

Principally, two issues arise before us.

First, the contention of Mr. Jishnu Choudhury, learned advocate for the appellant that the subject agreement is unstamped and cannot be relied upon for any purpose. Secondly, his contention that the impugned order has been passed without giving an opportunity to the appellant to file an affidavit and the section 9 application was disposed of at the ad-interim stage.

To this Mr. Chakraborty, learned advocate for the respondent submits that the matter was thoroughly argued on behalf of the appellant and their contentions noted in the impugned order. He also said that steps have been taken to stamp the agreement.

It remains an admitted position that the impugned order was passed without an affidavit of the appellant filed in court and at the ad-interim stage.

As far as the stamp duty issue is concerned, it is quite unclear whether the document has been sent for assessment or whether assessment has been made and stamp duty paid on the basis of it.

What is more fundamental is that in this application very vexed questions of facts are involved. The respondent is said to be in possession of the tea garden owned by the appellant and is running the same. According to them, they have paid substantial money to meet the liability of the business. The appellant if it is said is required under the subject

agreement to transfer the tea garden to them. That the respondent is in possession of the tea garden and running the business is disputed by Mr. Choudhury.

The appellant proposes to transfer the subject tea garden and pay off the dues of the respondent. The respondent claims specific performance of the agreement by transfer of the tea garden to them.

The question before the learned court below was whether on these facts the appellant should be restrained from dealing with the tea garden.

We are of the view that these issues ought to have been considered after giving an opportunity to the appellant to file an affidavit in the section 9 application and thereafter assessing the respective cases of the parties in detail.

In those circumstances, we think it proper that this matter be remanded to the court below after setting aside its order dated 9th April, 2021.

We order accordingly but add that we do so on purely the technical and procedural grounds mentioned above. We have not gone into the merits of the controversy between the parties.

Written objection to the section 9 application shall be filed by the appellant before the learned court below by 2nd July, 2021. Rejoinder, if any, be filed by 12th July, 2021. The learned judge of the learned Commercial Court, Siliguri will determine the section 9

application afresh, without being influenced by any observations or findings made in the impugned order dated 9th April, 2021 as early as possible, preferably not later than eight weeks from the date of communication of this order.

Till 26th August, 2021 and subject to the orders that may be passed by the learned court below the appellant shall not transfer, encumber or otherwise deal with the tea garden described in the schedule to the subject agreement.

The learned court shall not grant any unnecessary adjournment and shall have the power to extend the interim order in unforeseen and extreme circumstances.

All questions regarding maintainability, stamping of the agreement and other documents and the merits of the matter are left open before the court below.

The appeal (F.M.A.T. 356 of 2021) and the connected application (CAN 1 of 2021) are thus disposed of.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)