

23.07.2021

Sl. 6

Ct.No. 03

Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMAT 427 of 2021

With

CAN 1 of 2021

Usha Projects Private Ltd.

Vs.

Sanjay Banerjee & Anr.

Mr. Abhrajit Mitra, Sr. Advocate

Mr. Jishnu Chowdhury

Mr. Biswajit Kumar

Mr. Souradeep Banerjee

Mr. Debayan Sen

... for the appellant

Re: CAN 1 of 2021 (Stay)

This is an appeal from an order dated 6th July, 2021 passed ex parte by the learned court below refusing an interim order prayed for by the appellant.

Mr. Abhrajit Mitra, learned senior advocate appearing for the appellant/petitioner has moved this stay application ex parte on the same footing as his client had moved the interim application before the court below.

On a reading of the impugned order, the facts are such that would justify our disposal of the appeal today.

The impugned order was made on 6th July, 2021. No interim order was passed at this stage which implied that it would be reconsidered upon notice to the respondents. The returnable

date of the application was 20th August, 2021, i.e., six weeks later. If the returnable date is that long, the occurrence of some events which are sought to be restrained by an interim order might occur without any redress to the appellant/petitioner. By that time the application may become infructuous.

We do not appreciate how even issuance of notice under Section 21 of the Arbitration and Conciliation Act, 1996 was a condition precedent to the appellant/petitioner asking for a Section 9 order. The opening words of Section 9 make it absolutely plain that the application is maintainable even before the arbitral proceedings have commenced.

From the reasons advanced in the impugned order, the learned judge should not have even *prima facie* come to conclusion that there was no dispute between the parties.

Our observations are not to be taken to have any binding effect on the court below. But in our view, it is necessary that the Section 9 application before it, at the ad-interim order stage, has to be considered *de novo*, in the presence of the appellant, by preponing the returnable date.

We order accordingly.

We direct the appellant to move the learned court below to prepone the date of hearing of the application so as to comply with our order.

We are not setting aside the impugned order dated 6th July, 2021.

We observe that the learned judge while considering the application shall not rely upon any prima facie findings made in that order.

We also expect that till the learned judge is able to take up the application, the respondents shall not take any steps so as to make that consideration infructuous.

The appeal (FMAT 427 of 2021) is formally admitted and disposed of by the above order after dispensing with all other formalities.

Accordingly, the connected application for stay (CAN 1 of 2021) is also disposed of.

(I. P. Mukerji,J.)

(Arindam Mukherjee,J.)