

02.09.2021

Sl. 3

Ct.No. 03

Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(COMMERCIAL DIVISION)**

FMAT 505 of 2021

**Petrolube Centre & Ors.
Vs.
Bharat Petroleum Corporation Ltd.**

**With
CAN No. 1 of 2021**

Mr. Suddhasatva Banerjee
Mr. Chayan Gupta
Ms. Ratul Das
Mr. Aniruddha Agarwalla
Mr. B.N. Joshi
Mr. Amit Agarwalla

... for the appellants

Mr. Vikram Wadehra
Ms. Vidushi Chokhani

...for the respondent

Re: CAN No. 1 of 2021(injunction)

By passage of time and occurrence of events, this appeal has become infructuous. The reasons are these:

The appellants/petitioners claim to be a franchisee of an “in and out convenience store” under the respondent Corporation. The agreement between the parties contained an arbitration clause.

By a notice dated 23rd July, 2021, this agreement was terminated by the respondent and the appellants/petitioners were asked to

quit and vacate the subject property immediately.

An application under Section 9 of the Arbitration and Conciliation Act, 1996 was made by the appellants/petitioners before the learned Judge, Commercial Court at Alipore.

On 25th August, 2021 an ad-interim ex parte order of injunction was refused by the learned Judge with routine consequential direction for issuance of show cause, appearance etc. From this order this appeal has been preferred by the appellants/petitioners.

On 31st August, 2021 this court made an order for service of the connected application with this appeal on the respondent and made it returnable today.

Today we are told that in the meantime a proceeding had already commenced with the Estate Officer under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 initiated by the respondent.

On 31st August, 2021 an order was passed for eviction of the appellants/petitioners.

Now, this order of the Estate Officer can be viewed as an order of eviction pursuant to statutory sanction. When an action taken

further to statutory sanction covers a particular subject matter of an arbitration agreement, it is deemed to have taken away that area of consideration from the learned Arbitrator. Unless this order of the Estate Officer is interfered with by a competent court or authority so as to relegate the matter back to the Arbitrator, the arbitral tribunal does not have jurisdiction over the subject matter.

With these observations, this appeal and the connected application are disposed of with liberty to the appellants/petitioners to take an appropriate step under the arbitration agreement afresh, if at all, and when such remedy is available to them with regard to the said specific dispute regarding the premises.

(Aniruddha Roy,J.)

(I. P. Mukerji,J.)