

30.9.2021

ASR 2.

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

**FMAT 593 of 2021
With
CAN 1 of 2021
(Via Video Conference)**

**Bengal Peerless Housing Development Limited & Anr.
Vs.**

Tirupati Shubh Shopper Private Limited

**Mr. Debojyoti Basu
Mr. Shambu Chakraborty
Mr. Diptomoy Talukdar
Mr. Triptimoy Talukdar
Mr. Sukrit Mukherjee
Mr. K. Chatterjee**

.....for the appellants

**Mr. Jishnu Chowdhury
Mr. Arkan Rai
Mr. Ratuesh Kumar Rai**

.....for the respondent

We admit the appeal.

We proposed to hear it out today dispensing with all formalities.

This is an appeal, by the respondents in the learned court below, in an application under Section 9 of the Arbitration and Conciliation Act, 1996. They are aggrieved by the order dated 17th September, 2021 by the learned judge, Commercial Court at Rajarhat restraining them from creating any third party interest in respect of the subject property till 4th October, 2021.

The impugned order is ad interim and ex parte.

The returnable date of the application is 4th October, 2021.

Learned counsel for the appellants/respondents canvassed the point of lack of jurisdiction of the said Court to entertain try and determine the application. He says that the application is not maintainable before that court.

We are of the view that the jurisdiction of the Court, maintainability of the application and continuance of the interim order should be decided by the learned court below upon hearing the parties and by a reasoned order. In those circumstances, the question of maintainability has to be decided, even if prima facie, first. The learned judge should make all endeavour to deal with the matter regarding continuance of the interim order and to decide it by 15th November, 2021, preferably.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)