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12.08.2021
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CO No.2566 of 2008

The Board of Trustees for the Port of Kolkata
Vs.
M/s Build India Construction Company
and another

(Via video conference)

Mr. Probal Mukherjee,
Mr. Ashok Kumar Jena

.... for the petitioner

Affidavit-of-service filed in court today be
kept on record.

It appears that despite repeated efforts, the
opposite parties could not be served. It is evident that
the opposite parties are apparently not residing at the
premises-in-question any more, although the address
to which the copies were sent pertains to the property-
in-dispute.

As such, there is no other option but to take up
the matter for hearing *ex parte*.

Learned senior counsel appearing for the
petitioner argues that the appellate court acted
palpably without jurisdiction in referring the matter to
arbitration under Section 8 of the Arbitration and

Conciliation Act, 1996 (for brevity “the 1996 Act”) since no such application was presented before the Estate Officer, which was the first forum, as per the requirement of Section 8.

There is substance in such contention, since Section 8 of the 1996 Act contemplates the filing of an objection under Section 8 at the first occasion when the defendants or opposite parties, as the case may be, present their defence.

In the present case, since no such question was raised at all before the first forum, the appellate court did not have jurisdiction to entertain such an application and acted erroneously in allowing the same, thereby referring the matter to Arbitrator.

That apart, the scope of hearing by the appellate court under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being limited to the legality and propriety of the order of the Estate Officer challenged before the said appellate court, it was beyond the jurisdiction of the appellate forum to exercise the powers vested solely with the first forum, in view of the specific language of Section 8 of the 1996 Act.

In such view of the matter, CO No.2566 of 2008 is allowed *ex parte*, thereby setting aside the Order No.23 dated May 17, 2008 passed by the Additional

District Judge, Fast Track Fourth Court at Tamluk,
District: Purba Medinipur in Miscellaneous Appeal
No.1 of 2008. The said appellate court shall now take
up the appeal itself for hearing on merits and make
endeavour to dispose of the same as expeditiously as
possible, preferably within one year from the date of
communication of this order to the appellate court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if
applied for, be made available to the parties upon
compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)