

22-01-2021

Ct. 12

FMAT 1206 of 2019
With
CAN 1 of 2019 (old CAN 11314 of 2019)

Smt. Nitu Shaw
Versus
Bharat Hitech (Cements) Pvt. Ltd.

(Through Video Conference)

Mr. Tanmoy Mukherjee, Adv.
Mr. Subham Ghosh, Adv.

...for the appellant.

Mr. Nilay Sen Gupta, Adv.

...for the respondent

This appeal is arising out of an order being No. 9 dated 1st October, 2019 in an application filed by the appellant before the learned District Judge, Howrah for return of the application filed under Section 34 of the Conciliation and Arbitration Act to a Court having the jurisdiction. The basis of the application appears to be the Forum Selection Clause mentioned in Clause 26 of the Arbitration and Conciliation Agreement.

We have seen the agreement as also the Forum Selection Clause. There cannot be any doubt that the Principal Civil Court in deciding the application under Section 34 of the Arbitration and Conciliation Act would be either the Commercial Division of the Calcutta High Court or the Commercial Division of City Civil Court subject to the pecuniary jurisdiction in terms of the notification No.158 JL dated 20th March, 2020.

Since the application for setting aside of the award was filed

within time, which fact is not disputed by the award-holder, the application under Section 34 of the Arbitration and Conciliation Act filed before the District Judge, Howrah shall be returned to the appellant immediately on production of this order after furnishing a photostat copy of the same and is to be filed before the appropriate forum within two weeks from the date of return of the application before the appropriate court.

In the event the said application is filed within the aforesaid period of time, the same shall be reckoned from the date of filing of the original application for the purpose of limitation.

The appeal and the application are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Aniruddha Roy, J.)

(Soumen Sen, J.)