

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
(Via Video Conference)**

**FMAT 19 of 2021
IA No: CAN 1 of 2021**

**Haldibari Industries and Plantation Company Ltd.
Vs.
Haldibari Tea Manufacturers LLP**

Mr. Partha Pratim Roy,
Mr. Suman Sehanabish Mandal

...for the appellant

Mr. Joyjit Choudhury,
Mr. Rohit Agarwal,
Mr. Ajay Singhal

.... for the respondent

The primary question raised in the present appeal, preferred against an order passed by the concerned District Judge under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), is regarding maintainability of the application before the District Judge.

Learned counsel appearing for the appellant submits that in view of the provisions of the Commercial Courts Act, 2015 (hereinafter referred to as “the 2015 Act”), the application lay before a Designated Commercial Court and not the court ordinarily having jurisdiction.

Learned counsel places reliance on the definition of commercial dispute as stipulated in Section 2(c) of the 2015 Act and draws our attention to Clause (vii) thereof. The said Clause provides that agreements relating to immovable property used exclusively in trade or commerce come within the purview of “commercial dispute”. Next placing reliance on Section 10(3) of the 2015 Act, learned counsel for the appellant argues that since the application under Section 9 of the 1996 Act was filed in connection with an arbitration, which is not an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the 1996 Act would ordinarily lie before any principal civil court of original jurisdiction in a district and be heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

Learned counsel appearing for the respondent, while answering such preliminary question, contends that a reading of the application under Section 9 as a whole would reveal that the prayers made did not pertain directly to the assignment agreement but were incidental and innocuous in nature, for the purpose of seeking

interim protection before the matter is referred to arbitration.

Learned counsel submits that since the District Judge otherwise had jurisdiction to take up the matter within the purview of the 1996 Act, the District Judge in the present case had jurisdiction to entertain the application under Section 9 of the said Act.

Upon considering the submissions of learned counsel and a complete reading of the application under Section 9 of the 1996 Act, it is evident to us that the plinth of the rights claimed by the present respondent no.1 is an assignment agreement, which stipulates Rs.23,50,00,000/- as the consideration amount. Evidently, such dispute, since pertaining to an agreement relating to immovable property used exclusively in trade and commerce, comes within the purview of Section 2(c)(vii) of the 2015 Act. The language of Section 10(3) of the said Act is very clear and there is no qualification regarding the types of applications which have to go before the commercial court, apart from the dispute being commercial in nature.

Since the application-in-question, under Section 9 of the 1996 Act, was arising out of a contemplated arbitration proceeding which would relate to a commercial dispute within the scope of

the definition of the said expression in the 2015 Act, the District Judge did not have jurisdiction, not being the Designated Commercial Court, to entertain the application. The limited purpose for which the District Judge has administrative control over the matter pertains only, at best, to the filing of the application but the same had to be heard and disposed of from the initial stage by the Designated Commercial Court.

Thus, the impugned order cannot be sustained on the grounds as discussed above.

FMAT 19 of 2021 is thus allowed setting aside the order dated October 20, 2020 passed by the learned District Judge, Jalpaiguri in Miscellaneous Case No.39 of 2020 (11/2020) (Arb.). CAN 1 of 2021 is also disposed of consequentially.

It is made clear that the merits of the contentions raised by the parties in connection with the application under Section 9 have not been entered into by this court and it will be open to the concerned commercial court to decide the said application and the interim reliefs claimed in respect thereof on their own merits without being influenced in any manner by any of the observations made herein.

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.)

(Kausik Chanda, J.)