

133 **11.11.
2022**
Ct. No. 04

Ab

FMAT (ARBAWARD) 38 of 2022
With
IA No. CAN 1 of 2022

Saibal Kumar Guin
Vs.
Trendy Bazzar.

Mr. Kishore Mukherjee
... for the appellant.

The instant appeal arises from an order dated 29th March 2022 passed by the Arbitrator directing the appellant to produce the documents on an application filed by the respondent under Order XI Rule 14 of the Code of Civil Procedure.

At the very outset we asked the learned Advocate appearing for the appellant whether such order is amenable to be challenged by way of an appeal before this Court under Section 37 of the Arbitration and Conciliation Act, 1996.

Learned Advocate appearing for the appellant submits that the dispute pertains to the immovable property and the payment of rent and, therefore, the order producing the documents as sought for is beyond the scope of the authority conferred upon the arbitral tribunal.

In fact, the point sought to be taken before us is that the said order shall be construed to have been made under Section 16(3) of the said Act and, therefore, in view of Section 37(2)(a) of the said Act, the appeal is maintainable.

It is beyond cavil of doubt that when the statute has provided the remedy by way of an appeal against the orders enumerated in the provision, the right of appeal cannot be assumed for the simple reason as

such right emanates from the statutory provision.

It is no doubt true that an order under Section 16(3) of the said Act is capable of being challenged by way of an appeal under Section 37 of the said Act, but before this Court embark its journey on such score has to find out whether the impugned order can be construed to have been made under Section 16(3) of the said Act.

Before the Arbitrator, an application was taken out under Order XI Rule 14 of the Code for production of the documents in possession of the appellant. Whether such documents have any relevance to the disputes raised in the said arbitral proceeding is different from the source of the power exercised by the Arbitrator under the provisions of the Act. Sub-section (3) of Section 16 of the said Act postulates that it is imperative on the part of the party to raise a plea that the arbitral tribunal is exceeding the scope of the authority meaning thereby that any action of the arbitral tribunal, which does not come within the peripheral of the arbitration agreement cannot be applied to a procedural order passed in furtherance of the arbitral proceeding.

The appellant has failed to demonstrate before us that the impugned order passed by the arbitral tribunal is in excess of the scope of the authority and was in excess of the authority conferred upon the said arbitral tribunal. Section 13(1) of the said Act confers the right on the parties to agree on the procedure for challenging the Arbitrator. It does not appear that there is any such procedure having agreed by the parties and, therefore, we do not find that mere production of the documents, which in the opinion of the arbitral tribunal is relevant for the purpose of an adjudication of the dispute, can be said to be an order passed in excess of the jurisdiction.

We, thus, do not find that the impugned order is amenable to be challenged by way of an appeal taking shelter under Section 37(2)(a) of the said Act.

The appeal is, thus, dismissed.

The connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)