

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 53 of 2023

Todi Investors
Vs.
Raj Kumar Shaw & Ors.

Mr. Prabhat Kumar Srivastawa
Mr. Subhamoy Patra
... For the petitioner

Mr. Shubham Gupta
Mr. Rajiv Kumar
Mr. Raunak Shaw
.... For the opposite party no.2

The order no.15 dated 31st August, 2022 passed by the learned Chief Judge (in-Charge), City Civil Court, Calcutta, is under challenge in this application.

Learned advocate on behalf of the petitioner has submitted that one application was filed by the opposite parties under Section 37 of the Arbitration and Conciliation Act, 1996 before the Chief Judge (in-Charge), City Civil Court, Calcutta, and in course of pendency of that application, the petitioner/respondent filed an application under Section 151 of the Code of Civil Procedure before the Chief Judge, City Civil Court, Calcutta, challenging the jurisdiction of the Court over an application under Section 37 of the Arbitration and Conciliation Act, 1996 and that application was fixed on 7th November, 2022 for hearing. But, in the meantime,

record was put up at the instance of the appellant/opposite party along with other petition which was kept in record directing to put up on 31st August, 2022. Thereafter on 31st August, 2022, the application under Section 37 of the Arbitration and Conciliation Act, which was registered as Misc. Appeal No.53 of 2021, was disposed of by allowing the same.

Learned advocate on behalf of the opposite party has submitted that one application under Section 17 of the Arbitration and Conciliation Act, 1996 was pending before the learned Arbitrator but the learned Arbitrator in an ex parte order seized the vehicle belonging to the appellant/opposite party having no connection with the application under Section 17 of the Arbitration and Conciliation Act, 1996 pending before the learned Arbitrator and challenging that order passed by the learned Arbitrator, the application was filed before the learned Chief Judge, City Civil Court, Calcutta, by the appellant/opposite party which was registered as Misc. Appeal No.53 of 2021.

On careful perusal of the impugned order, I find that the learned Judge disposed of the appeal on 31st August, 2022 without fixing any date for hearing and also without hearing the application under Section 151 of the Code of Civil Procedure challenging the jurisdiction of the Court which was fixed on 7th November, 2022 for hearing.

On perusal of the order no.13 dated 12th August, 2022, order no.14 dated 26th August, 2022 and the impugned order, I find sheer infirmity in the order passed on 31st August, 2022 which is liable to be set aside.

Therefore, with the aforesaid observation, the order no.15 dated 31st August, 2022 passed in connection with Misc. Appeal No.53 of 2021 stands set aside.

Learned Chief Judge (in-Charge), City Civil Court, Calcutta, is requested to adjudicate the issue of maintainability of the appeal raised by filing the application under Section 151 of the Code of Civil Procedure first and then dispose of the appeal arose out of an application under Section 37 of the Arbitration and Conciliation Act, 1996. However, the learned Judge can hear both the application under Section 151 of the Code of Civil Procedure as well as the appeal arose out of an application under Section 37 of the Arbitration and Conciliation Act, 1996 together.

With the above observation, the revisional application, being CO 53 of 2023, stands disposed of.

Learned advocates appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Chief Judge (in-Charge), City Civil Court, Calcutta, forthwith.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)