

09 27.6.2023

Ct-37

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**In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

**FMAT 267 of 2023
with
CAN 1 of 2023**

**Lalita Devi Sureka
Vs.
Union of India**

Mr. Rupak Ghosh
Mr. Jayanta Sengupta
Ms. Poulami Roy
... For the Appellant/Petitioner

Affidavit of service filed in court be kept with the record.

In spite of service, the respondent is not represented.

The appeal is arising out of an order of refusal to pass an order of injunction in an application filed under Section 9 of the Arbitration & Conciliation Act, 1996.

Learned counsel for the appellant submits that the learned Trial Judge has arrived at a finding that the appellant was successful in establishing the trinity test of temporary injunction and the trial court after having recorded such satisfaction has failed to exercise its jurisdiction in favour of the appellant.

The petitioner approached the learned Commercial Court with an application under Section 9 of the Arbitration & Conciliation Act, 1996 challenging the termination notice dated 1st June, 2023 and also prayed for injunction restraining the respondent from invoking the performance guarantee of Rs.8,24,958/-.

In view of the fact that the trial court has prima facie come to a finding that the reason for

the delay was not attributable to the petitioner and the termination, prima facie, appears to be illegal, ought to have passed a limited order of injunction till the matter is taken up upon notice to the other side.

We have been informed that the matter is fixed today before the learned Judge, Commercial Court and is likely to be taken in the second half.

In the event the performance guarantee has not yet been invoked and proceeds have not been remitted and realized, the said guarantee shall not be invoked for a period of four weeks from date.

Learned Judge, Commercial Court, is requested to consider the prayer for injunction before filing of affidavits and in the event the learned Judge is of the opinion upon hearing the respondent that the petitioner is entitled to injunction order shall continue the said order till the disposal of the application.

It is needless to mention that the learned Judge, Commercial Court shall consider the issue not being influenced by this order.

In view of the above, the appeal and the application being CAN 1 of 2023 are disposed of.

(Uday Kumar,J.)

(Soumen Sen, J.)

