

24.08.2023
KC(10)

F.M.A.T. 288 of 2022
Biswajit Das
-versus-
Kartick Chandra Singha and Ors.
With
CAN 1 of 2022
With
CAN 2 of 2023

Mr. Kishore Mukherjee,
Mr. Anitagni Dey.....For the appellant.

An affidavit of service is on record. None appears for the respondent or the proforma respondents.

The point involved is very short. We propose to dispose of this appeal by dispensing with all formalities.

The subject matter of controversy between the parties is inter alia with regard to allocation of shares of the parties in the subject property. The respondents are the owners of the property on which a multi-storied building has been built. The appellant is the developer.

The agreement between the parties contains an arbitration clause.

Invoking this clause an application under Section 9 of the Arbitration and Conciliation Act, 1996 was made by the respondent before the learned court below.

On perusal of the impugned judgment and order of the learned court below dated 7th June, 2022 we find that the issues in the Section 9 application have not

been addressed at all by the learned judge. Instead the matter was referred to arbitration according to the arbitration clause. The interim order passed at the threshold was directed to continue till “adjudication of the arbitration proceeding.”

The proper approach would have been to consider the case in the Section 9 application and thereafter pass any order with reasons till the disposal of the arbitral proceedings.

In that view of the matter we set aside the impugned judgment and order dated 7th June, 2022. We remand the entire matter to the learned court below to consider the case in the Section 9 application according to our observation above.

The appeal (F.M.A.T. 288 of 2022) is allowed. The connected application (CAN 1 of 2022) is allowed. The connected application (CAN 2 of 2023) is allowed.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

