

**12-09-2023**  
Item no.4 CD  
**Subrata**  
**Bhattacharyya**  
AR(C)

**IN THE HIGH COURT AT CALCUTTA**  
Civil Appellate Jurisdiction  
(Commercial Division)

**FMAT No.348 of 2023**  
**Jharna Das & Anr.**  
**-vs-**  
**Sri Sumanta Dutta & Ors.**  
**with**  
**CAN No.1 of 2023**

Mr. Siddhartha Banerjee  
Mr. Dyutiman Banerjee  
Mr. Soumajit Majumder ...for the appellants

Mr. Ayan Banerjee  
Mr. Suman Banerjee ...for respondent no.1

The impugned judgement and order dated 14<sup>th</sup> March 2023 was made under section 9 of the Arbitration and Conciliation Act, 1996. It has been challenged on principally two grounds: First, there is no arbitration agreement between the parties covering the subject matter of the disputes. Secondly, the impugned order has been obtained from the learned commercial court, North 24 Parganas, although the dispute is not commercial.

The impugned judgement and order was passed on contest.

We do not find that any such point was taken before the learned judge.

Mr Siddhartha Banerjee, learned advocate appearing for the appellants, submits that this point was not taken because in the meantime an arbitrator had also been appointed by this court under section 11 of the said Act.

We do not understand how that could have been a ground for not taking the above points.

Learned counsel now submits that the matter be remanded to the learned judge.

We are of the view that since this order was passed on contest and the above point not having been taken, no error can be ascribed to the said order, *prima facie*.

However, the points now taken by Mr Banerjee regarding arbitrability and jurisdiction are very substantial and they go to the root of the matter. His clients are given an opportunity to take steps to uphold these two contentions.

In that view of the matter, dispensing with all formalities, we heard out the appeal and the connected application. We direct that the interim order passed by the learned court below will continue till 19<sup>th</sup> October 2023 subject to its continuance or modification by the court or arbitral tribunal, as the case may be. If no such order or award is forthcoming, this interim order will automatically lapse.

The appeal and the stay application – FMAT No.348 of 2023 and CAN No.1 of 2023 – are, thus, disposed of.

**[I.P. Mukerji, J]**

**[Biswaroop Chowdhury, J]**

