

01.02.2024  
SSS (5)

**F.M.A.T (ARBAWARD) 1 of 2024**  
**With**  
**CAN 1 of 2024**

**Subhas Kumar Banerjee and Ors.**  
**Vs.**  
**Saroj Kumar Banerjee**

Mr. Arun Kumar Dev,  
Mr. Partha Pratim Dey,  
Mr. Pinaki Brata Ghosh,  
Mr. Abhinaba Roy,  
Mr. Kaushik Karmakar, Advs.  
.....for the Appellants/Petitioners.

Mr. Raghunath Chakraborty,  
Mr. Supratick Shyamal,  
Ms. Tanusree Das, Advs.  
.....for the Respondent.

We admit this appeal.

We are in a position to dispose of it today  
dispensing with all formalities.

This appeal is against an order dated 22<sup>nd</sup>  
December, 2023 made by the learned court below in an  
application under Section 9 of the Arbitration and  
Conciliation Act, 1996.

The main point taken in this appeal by learned  
counsel for the appellants is that there is no valid  
arbitration clause binding the parties. The disputed  
arbitration clause is part of Clause 10 of the re-  
constituted deed of partnership dated 31<sup>st</sup> August, 2016.  
It is in the following terms:-

“To submit any dispute relating to the business of

firm to arbitration.”

Learned counsel for the appellant contended that no arbitration agreement was concluded by this clause.

One of the major issues raised by the appellants before the trial court was that the respondent was indiscriminately withdrawing fund from the partnership firm.

Prima facie, it does not appear that there is any absence of arbitration agreement. An arbitration agreement may well be executed without naming the arbitrator who may be nominated in accordance with the procedure prescribed in the said Act.

Prima facie, we also find the impugned interim order permitting the respondent to withdraw or utilize 25% of the balance in the bank account exclusively for business purpose to be a reasonable stipulation. We do not think it at all necessary to interfere with the impugned judgment and order.

However, the point regarding existence of the arbitration clause may be determined in various jurisdictions, for example, in the Section 9 application itself or in an application under Section 11 of the said Act or in some cases by the arbitrator, if his authority is questioned by the parties.

It would be open to the appellants to question the validity of the arbitration agreement before any

jurisdiction where it is triable. In that case, our observations will only be treated as prima facie or tentative.

We dispose of this appeal and application (CAN 1 of 2024) affirming the impugned judgment and order with a request to the learned judge in the court below to dispose of the Section 9 application as expeditiously as possible.

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

**[Biswaroop Chowdhury, J]**