

09-04-2024
Item no.4 CD
Subrata
Bhattacharyya
AR(C)

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

FMAT No.59 of 2024
Bharat Petroleum Corporation Limited (BPCL)
-vs-
Anubhav Ghosh & Anr.
with
CAN No.1 of 2024

Mr. Sanjib Kumar Mal
Mr. Bimalendu Das
Mr. Shomrik Das ...for the appellant

Mr. Ritzu Ghosal
Mr. Chayan Gupta
Mr. Sayantan Chatterjee
Mr. Anirban Ghosh ...for the respondents

We formally admit the appeal.

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

This appeal is from a judgement and order dated 5th January 2024 passed by the learned Judge, Commercial Court at Alipore in an application under section 9 of the Arbitration and Conciliation Act, 1996.

By this judgement and order, the appellant has been prevented from giving “any effect to and/or further effect to and/or acting in terms of or in pursuance of the letter dated 26th December, 2023 till the next date as fixed hereunder”.

By the letter dated 26th December 2023, the appellant had stated that their representative would be present at the retail outlet site on 27th December 2023 at 12.00 hours to take over the assets and materials belonging to the appellant and the retail outlet site.

Mr Sanjib Kumar Mal, learned advocate appearing for the appellant, has principally taken the grounds enumerated below.

He submitted that that the parties in the proceedings were different from those who executed the arbitration agreement. The arbitration agreement was between the appellant and a partnership firm and its partners. The firm could not be reconstituted without the permission of the appellant. It appeared to have been so reconstituted without permission. The reconstituted firm and/or partners were not parties to this arbitration agreement. Mr Mall submitted that some of the parties in the proceedings have been wrongly impleaded. He showed us an order of a division bench of this court dated 27th April 2023. He said that the impugned order was contrary to the said order dated 27th April 2023 permitting the appellant to operate the outlet with their staff.

The third point which has been raised by Mr Mal is with regard to territorial jurisdiction. He argued that the commercial court at Alipore had no territorial jurisdiction to try and determine this application.

We learn from the records and submissions made by learned counsel for the parties that this application upon filing of affidavits is due to appear before the learned court below on 26th April 2024. On that date, suitable directions should be passed by the learned court for completion of affidavits in the application. Thereafter, a date be fixed for hearing of the interim application when all points, including those urged in this appeal, shall be open.

Learned judge will not be influenced by any observations made in the impugned judgement and order

dated 5th January 2024. Learned judge shall make every attempt to dispose of the interim application within two months of communication of this order.

The appeal and the connected stay application – FMAT No.59 of 2024 with CAN No.1 of 2024 – are thus disposed of.

As affidavits have not been invited, the allegations contained in the appeal and the application are deemed not to have been admitted by the respondents.

[I.P. Mukerji, J]

[Md. Shabbar Rashidi, J]