

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Apurba Sinha Ray

FMAT (ARBAWARD) No.15 of 2024

With

CAN 1 of 2024

Maa Vaishno Devi Enterprise & Anr.

Vs.

Samujjal Enterprise & Ors.

For the Appellants : Mr. Debajyoti Basu, Adv.,
Mr. Triptimoy Talukder, Adv.,
Mr. Diptomoy Talukder, Adv.
Mr. D. Ghosh, Adv.

For the Respondent : Mr. Probal Kr. Mukherjee, Sr. Adv.,
Nos.1 to 6 Mr. Suhrid Sur, Adv.

Order dated : 14th November, 2024

Soumen Sen, J : (Oral)

The appeal is arising out of a judgment and order passed by the learned 2nd Court at Barasat in connection with an application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act').

The dispute between the parties is arising out of a registered development agreement executed by and between the plaintiff, Samujjal

Enterprise, the opposite party no.1 herein and the appellants on 6th January, 2014.

The appellant no.1 is a proprietorship firm represented by the appellant no.2. Initially a development agreement was entered into between the appellants with one Debjani Sarkar the original owner of the property in question on 6th January, 2014. Subsequently the owner transferred the property in favour of one Soma Singh on 19th May, 2015. Soma Singh by a registered deed of sale dated 13th March, 2019 conveyed the property in favour of the plaintiffs/respondents. The plaintiff is the present owner of the property. The appellants alleged that Debjani Sarkar could not have transferred her interest in the suit property in favour of 3rd parties in supersession of the earlier agreement. It is submitted that the development agreement with Debjani contains an Arbitration Clause. Dispute arose between the present appellant and Debjani Sarkar in respect of the development agreement. Debjani was attempting to transfer her share and interest to the 3rd parties in breach of the said agreement. It was on such consideration the appellants filed an application under Section 9 of the said Act being Misc. case being no.173 of 2015 before the learned Additional District Judge, Barasat in which proceeding Debjani Sarkar appeared and during the pendency of the said application Debjani Sarkar transferred the suit property in favour of Soma who subsequently transferred the property in favour of the plaintiff and its partners. Debjani executed the said conveyance as constituted attorney of Soma and transferred the self-same property in favour of plaintiff and his partners.

The present plaintiff derived its title through Debjani and hence is bound by the arbitration agreement. On such facts an application was filed under Section 8 of the said Act for referring the parties to the dispute to arbitration.

The said application was contested by the plaintiff being the transferee from Soma Singh who had purchased the property from Debjani Sarkar during the pendency of the proceeding under Section 9 of the Arbitration and Conciliation Act.

The learned District Judge dismissed the application on the ground that the subject matter of the action brought in by the plaintiffs does not fall entirely within the ambit of the arbitration clause contained in the development agreement on 6th January, 2014. Moreover, the present plaintiff is not a party to the development agreement which contains an arbitration clause. The learned Single Judge relied upon the decision of the Hon'ble Supreme Court in ***Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya & Ors.***¹ and held that there is no provision for splitting the cause or parties and referred the subject matter of the suit to the arbitrator in view of the law laid down in the said decision. The plaintiff is not a party to the arbitration agreement and it does not bind the plaintiff. The subject matter of the arbitration agreement does not include within itself the subject matter of the suit. The aforementioned development agreement was executed for the purpose of defining the

¹ (2003) 5 SCC 531: 2003 SCC OnLine SC 523

terms of development of the suit property which is not the subject matter of contention in the present suit.

There is no provision under the Act for splitting cause or parties before referring the parties to arbitration. Moreover, the appellants nos. 1 and 2 have preferred the said application under Section 8 of the Arbitration and Conciliation Act long after the filing of their first statement on the substance of dispute.

Mr. Debajyoti Basu, the learned Counsel for the appellants has strenuously argued that during the pendency of the application under Section 9 of the Arbitration and Conciliation Act, 1996 transfers had been made and the doctrine of lis pendens would apply. The present transferee steps into the shoes of the original owner and she derived her title from Debjani and accordingly she is bound by the arbitration clause.

The Apex Court in ***Cox and Kings Limited v SAP India Private Limited & Anr.***,² observed that

170.1. The definition of “parties” under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

170.3. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;

² (2024) 4 SCC 1

170.9. The persons “claiming through or under” can only assert a right in a derivative capacity;

230.4. The expression “claiming through or under” in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The decision in Chloro Controls tracing the Group of Companies doctrine through the phrase “claiming through or under” in Sections 8 and 45 is erroneous. The expression “party” in Section 2(1)(h) and Section 7 is distinct from “persons claiming through or under them”. This answers the remaining questions referred to the Constitution Bench” (emphasis supplied)

In ***M/S Devtree Corp. Ltd v. M/S Bhumika North Gardenia***³ decided on 24th July, 2024 the binding nature of the arbitration agreement on a derivative title holder in a sale deed was considered and it was held that a person who is not a party to the arbitration agreement, and purchases the property from a person who is a party to the agreement, is bound by the arbitration clause that is binding on his vendors. It is stated:

“12. This being the position, the contention that as per the law laid down in Cox and Kings supra, only a party who has signed the arbitration agreement can be a party to the arbitration proceeding or Section 9 proceeding is not acceptable. If a non-signatory to the arbitration agreement is “claiming through or under” the party to the arbitration agreement or if he has a derivative right under a party to the agreement, then such party is bound by the arbitration clause.

³ Miscellaneous First Appeal No. 2978 of 2024 (AA)

15. On a reading of Section 8(1) extracted above, it is evident that not only a party to the arbitration agreement but also a person claiming through or under a party can apply to refer the matter to arbitration if a proceeding is brought before judicial authority. This provision expressly recognises the right of the “party or anyone claiming through or under him” to the agreement to seek the resolution of a dispute through arbitration. If a party or a person claiming through or under a party to an arbitration agreement can apply to refer the matter to arbitration, the converse also applies, i.e., anyone claiming through or under the party to the arbitration agreement can be subjected to the jurisdiction of the Arbitral Tribunal.

16. The agreement dated 16.10.2020 contains a binding arbitration clause. The appellant/purchaser being the assignee, steps into the shoes of the vendors of the agreement dated 16.10.2020, and takes the properties from vendors with all rights and obligations attached to them. The transferee is not bound by the obligations only if the person in whose favour the obligations exist, agrees to waive such obligations. No such waiver is claimed or asserted by the appellant.

18. For the reasons assigned above, this Court is of the view that the appellant Company being a person who is not a party to the arbitration agreement, and being the purchaser of the properties from a person who is a party to the arbitration agreement, is bound by the arbitration clause binding on its vendor. It is not open to the appellant to contend that the arbitration agreement which is binding on its vendors is not binding on the appellant on a specious plea that it is not a signatory to the arbitration agreement.” (emphasis supplied)

On the question whether a person who purchases the property which is the subject matter of a proceeding under Section 9 of the

Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') is bound by the principle of lis pendens the Court held-

“19. Admittedly, the appellant purchased the properties when the vendors were parties in a pending (earlier) proceeding, under Section 9. The question is whether the transaction is hit by the lis pendens principle.

20. The doctrine of lis pendens is based on a sound public policy. It applies in a situation where the right over an immovable property is directly or substantially in question in a suit or proceeding which is not collusive. In such a situation, if any transfer of immovable property which is the subject matter of the suit or proceeding takes place, such transfer shall not affect any decree or order to be made in the said suit or proceeding.

22. The lis pendens doctrine envisaged under Section 52 of the Act of 1882 is based on public policy. Under the said doctrine, the transfer of property involved in a suit or proceeding is not altogether barred. However, the transfer of property, if takes place, will not affect the outcome of the suit or the proceeding and any such transfer will be subject to the outcome of the suit or proceeding.”

In a recent decision in **Siddamsetty Infra Projects Pvt. Ltd. v Katta Sujatha Reddy & Ors.**⁴, decided on 8th November, 2024 the Hon’ble Supreme Court has clearly observed *“The purpose of lis pendens is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose*

⁴ 2024 SCC OnLine SC 3214

of the provision is clearly elucidated in the explanation clause to Section 52 which defines "pendency". Amending Act 20 of 1929 substituted the word "pendency" in place of "active prosecution". The Amending Act also included the Explanation defining the expression "pendency of suit or proceeding". "Pendency" is defined to commence from the "date of institution" until the "disposal". The doctrine of *lis pendens* would commence at the stage of institution of the application under Section 9 of the said Act filed against Debjani.

Mr. Basu has submitted that existence of the arbitration clause is a *sine qua non* for referring the parties forming the subject matter of a judicial action to arbitration and having regard to the fact that the arbitration agreement between Debjani and the present appellants is not in dispute nor the existence of the development agreement in view of the decisions of the Hon'ble Supreme Court in ***Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens & Ors.*** reported at **(2007) 3 SCC 686**, ***P. Anand Gajapathi Raju & Ors. Vs. P.V.G. Raju (Dead) & Ors.*** reported at **(2000) 4 SCC 539** and ***Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums*** reported at **(2003) 6 SCC 503** clearly stating that Section 8 of the 1996 Act is peremptory in nature and where there exists an arbitration agreement, the Court is under an obligation to refer the parties to the arbitration agreement, the parties should have been referred to arbitrator.

Mr. Basu has referred to Sections 8 and 11 of the Arbitration and Conciliation Act and has argued that the nature of the enquiry are same

as stated in ***DLF Home Developers Limited Vs. Rajapura Homes Private Limited & Anr.*** reported at ***(2021) 16 SCC 743***, ***Sanjiv Prakash Vs. Seema Kukreja & Ors.*** reported at ***(2021) 9 SCC 732***, ***Mayavati Trading Pvt. Ltd. Vs. Pradyut Deb Burman*** reported at ***(2019) 8 SCC 714*** and ***Pravin Electricals Private Limited Vs. Galaxy Infra & Engineering Private Limited*** reported at ***(2021) 5 SCC 671***.

The learned Counsel has drawn specific attention to the observation in ***DLF Home Developers*** (supra) Paragraph 21 to argue that the limited jurisdiction of the Court under Section 11 would not, however, denude the Court of its judicial discretion to look beyond the bare existence of an arbitration clause to cut the deadwood. It is submitted that at the stage of deciding the application under Section 8, the Court is not required to consider the merits of the matter and the limited jurisdiction is only to find out the existence of an arbitration agreement.

Insofar as the finding of the learned Trial Court as to that the appellants have filed the application under Section 8 at much belated stage and after submitting its first statement on the substance of the dispute, it is argued that the question of waiver is a question of fact and it entirely falls within the jurisdiction of the arbitral tribunal to decide such issue. Mr. Basu in this regard has referred to the decision of the Hon'ble Supreme Court in ***M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh & Ors.*** reported at ***(1979) 2 SCC 409***, ***Paragraph 5*** in which it was observed that "it is elementary that waiver is a question of fact and it must be properly pleaded and proved". It is,

thus, argued that in the event in the arbitration proceeding the plaintiffs plead waiver and could establish that the appellants have their right, the arbitral tribunal shall decide such question and it is not required to be gone into at this stage.

Even if, we accept the binding nature of the arbitration on the plaintiff as a subsequent transferee and form an opinion that the present plaintiff is a successor in interest of Debjani and hence bound by the arbitration agreement following the ratio in **Cox and Kings** (*supra*) and **Deutree** (*supra*) the appellants have to cross the hurdle of explaining the reason for not pursuing arbitration against Debjani. Moreover, in the present proceeding a written statement has been filed by the appellants in which the appellants have dealt with the allegations in the plaints on merits.

Mr. Basu has drawn our attention to the orders passed in the proceeding initiated by the appellants under Section 9 of the Arbitration and Conciliation Act and the pleadings between the parties.

It appears that dispute arose by and between the parties consequent upon revocation of the development agreement and general power of attorney by Debjani on 21st April, 2015. The application under Section 9 was filed before the learned District Judge, North-24 Parganas, Barasat on 4th July, 2015. On that date the order was passed directing the parties to maintain status quo in respect of the schedule premises till 17th July, 2015 and Debjani was directed to show cause within 10 days from the date of receipt of the order as to why the petitioners' prayer for

an interim injunction shall not be granted. Prior to the said application, the property was transferred by Debjani in favour of Soma Singh by way of a registered deed of conveyance dated 19th May, 2015. As on that date the property was not under any litigation. During the pendency of the proceeding, Debjani filed an affidavit in which in paragraph 13 she has disclosed such transfer and also return of the consideration amount on 24th April, 2015. She has further alleged that the cancellation was duly published in a newspaper on 26th April, 2015. It was upon completion of all such formalities, the property was sold in favour of Soma on 19th May, 2015. Accordingly, as on the date of the order, Debjani was not the owner of the property and the order of injunction has no binding effect on Soma and similarly there was no embargo upon Soma to transfer the property in favour of the third parties, namely, the present plaintiffs. However, these events may not have much relevance but referred to only for the purpose of completeness. It has a limited application in the sense that under Section 9(2) of the Arbitration and Conciliation Act, the arbitral proceeding is required to commence within a period of 90 days from the date of such order or within such further time as the Court may determine. However, Mr. Basu has pointed out that this was introduced by way of an amendment on 23rd October, 2015 and proceeding has been initiated prior to the date of amendment and, accordingly, the embargo may not operate against the petitioners. However, the unamended Section came up for consideration before this Court and in a decision reported in **2008 (1) CHN 854 (National Small Industries Corporation Vs. Tulip Electricals Pvt. Ltd.)**, in which it has been clearly stated that

arbitration proceeding has to commence within a reasonable time, failing which, it shall be presumed that the applicant is not interested to proceed with the arbitration proceeding.

Admittedly no arbitration proceeding has commenced till date with no notice under Section 21 being served upon Debjani or the subsequent transferees. In fact, Soma Singh was not substituted in the said proceeding and there are many incurable lapses for which the matter cannot be referred to arbitration. Apart from the aforesaid, the application under Section 8 is required to be filed not later than the date of submitting first statement on the substance of the dispute. The expression “applies not later than the date of submitting his first statement on the substance of the dispute” have been considered in ***Rashtriya Ispat Nigam Ltd. and Another v Verma Transport Co.***⁵, ***Booz Allen and Hamilton Inc. v SBI Home Finance Limited and Others***⁶ and ***SSIPL Lifestyle Private Limited v Vama Apparels (India) Private Limited and Another***⁷ in which it has been categorically stated that if on a perusal of the pleadings it appears that the dispute has been dealt with on merits then it can be safely presumed that the defendant is not willing to invoke the arbitration clause.

In ***Booz Allen*** (*supra*) the Supreme Court dealing with the unamended Section 8 of the Act held as under:

⁵ (2006) 7 SCC 275

⁶ (2011) 5 SCC 532

⁷ 2020 SCC OnLine Del 1667

“29. Though Section 8 does not prescribe any time limit for filing an application under that section, and only states that the application under Section 8 of the Act should be filed before submission of the first statement on the substance of the dispute, the scheme of the Act and the provisions of the section clearly indicate that the application there under should be made at the earliest. Obviously, a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the court cannot subsequently turn round and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit.”

As observed in **Rashtriya Ispat Nigam Ltd.** (supra):

“36. The expression “first statement on the substance of the dispute” contained in Section 8(1) of the 1996 Act must be contradistinguished with the expression “written statement”. It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, is needed is a finding on the part of the judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, in our opinion, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court. What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not, if not, his application under Section 8 of the 1996 Act, may not be held wholly unmaintainable. We would deal with this question at some details, a little later.

38. In *Janki Saran Kailash Chandra* (supra), an application for time to file written statement was considered to be a step in the proceedings. We have noticed hereinbefore the respective scope of

Section 34 of the 1940 Act vis-a-vis the scope of Section 8 of the 1996 Act. In view of the changes brought about by the 1996 Act, we are of the opinion that what is necessary is disclosure of the entire substance in the main proceeding itself and not taking part in the supplemental proceeding.

39. By opposing the prayer for interim injunction, the restriction contained in Sub-section (1) of Section 8 was not attracted. Disclosure of a defence for the purpose of opposing a prayer for injunction would not necessarily mean that substance of the dispute has already been disclosed in the main proceeding. Supplemental and incidental proceeding are not part of the main proceeding. They are dealt with separately in the Code of Civil Procedure itself. Section 94 of the Code of Civil Procedure deals with supplemental proceedings. Incidental proceedings are those which arise out of the main proceeding. In view of the decision of this Court in Food Corporation of India (supra), the distinction between the main proceeding and supplemental proceeding must be borne in mind.”

Further in **SSPIL Lifestyle** (supra), it was opined that:

“27. Thus, before going into the question as to whether there is a limitation period prescribed for filing of the Section 8 application, this Court wishes to examine the significance of the amendment in the provision, if any. As observed earlier, under the unamended provision, the objection as to the existence of the arbitration clause could be taken anytime (i) prior to the filing of the written statement (ii) in the written statement (iii) along with the written statement. So long as the written statement was not filed, Section 8 application could be filed. The Legislature has now made a conscious change by using the language "not later than the date of". The use of the word 'date' itself signifies precision. A perusal of the various amendments brought about in 2016 Amendment Act show that the intention was

to tighten the time limit within which arbitration proceedings should commence and conclude. For example, under Section 9, previously, no limitation was fixed for commencement for invoking arbitration after seeking interim relief. However, in the amended provision, within 90 days after the interim order is passed, the arbitral proceedings have to be commenced. Similar amendments have been brought about in Section 11. Section 29A provides that the award in matters other than international commercial arbitration may be made as expeditiously as possible and an endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings. Section 29 B provides for the adoption of a fast track procedure and the award under this section shall be made within a period of six months from the date of the arbitral tribunal enters upon the reference. Thus, the entire emphasis in the 2016 amendments have been to speeden arbitral proceedings. It is in this context that the change of language in Section 8 from "when" to the "date of" is to be construed. In the opinion of this Court, the words 'not later than the date of submitting' means that the date of submitting the statement on the substance of the dispute i.e. the written statement in a civil suit, is the outer limit for filing of a Section 8. Hence, in effect, there is a limitation period which is prescribed.

29. As per the above findings of the Supreme Court, though the Court found that there was no time limit fixed for filing an application under Section 8, there was an obligation to move such an application "at the earliest". Under the unamended provision, if parties were contesting supplemental proceedings or were in talks of settlement etc., a Section 8 application could be moved anytime before the filing of the written statement. While in the unamended provision, the emphasis was on filing of the first statement on the substance of the dispute, now the emphasis is on the date of submitting the first statement. Under the unamended Act, the same

was a period and that too an unascertained period, it is not so under the amended Act.

31. Viewed in the background of the amendments in the CPC including the recent amendments in CPC in the context of the Commercial Courts Act, 2015 and the amendments in the Arbitration Act, 2016, this Court concludes that the amendment is a conscious step towards prescribing a limitation period for filing the Section 8 application. The mention of the word "date" in the amended provision means that it is a precise date and usually incapable of ambiguity. The same is a crystallized date and not a 'period' prior to the filing of the first statement on the substance of the dispute. The entire intention is that those parties who wish to proceed for arbitration ought to do so with alacrity and speed and not merely procrastinate."

In the instant case, we have read the written statement in which we do not find a single sentence regarding the arbitration agreement or that the written statement was filed reserving the right of the present appellants to file an application under Section 8 of the Arbitration and Conciliation Act. Even a reference to such arbitration agreement coupled with a plea of lack of jurisdiction to decide the suit in view of existence of an arbitration agreement has not been stated or specifically pleaded. It is well settled by a catena of decisions that where a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court he cannot later turn around and apply for reference under Section 8. Moreover, the said application was filed at a much belated stage.

In **TRL Krosaki Refractories Ltd. v Lindsay International Private Limited**⁸, decided by one of us (Soumen Sen, J) the Court observed as follows-

“Section 4 of the Act refers to rights which are non-derogable. If it appears to the court that the petitioner with the knowledge of the arbitration clause had participated in a suit or other proceeding and invited an adjudication of the dispute on merits other than by way of arbitration, it would be unwise to refer the parties to arbitration merely on the basis that there is a valid arbitration agreement between the parties as it would disentitle such party to apply to the court for reference of the dispute to arbitration. The doctrine of election in this context would mean the choice of forum. The Civil Court ordinarily has plenary jurisdiction to decide all civil disputes. The parties by agreement cannot confer a jurisdiction on a civil court which it otherwise does not possess. However, the parties may in an agreement decide the choice of forum. In the instant case, the parties have agreed to decide their dispute arising out of the purchase order to be resolved in arbitration. In a given situation where notwithstanding the existence of arbitration agreement, if a party approaches a civil court and the other party does not object to the jurisdiction of such civil court on the ground of lack of jurisdiction due to agreed choice of forum, the party forfeits or loses its right to question the jurisdiction of the civil court later on after the said party surrenders to the jurisdiction of that court. The submission of jurisdiction to that court would disqualify a party from seeking a remedy in a different forum as he has acted in derogation of agreed procedure. This is what Section 4 of the Act recognizes and if a party has acted in derogation of the agreement which contains an arbitration clause, the said party would be considered to have waived its right to claim adjudication in arbitration. One of the

⁸ A.P. No. 969 of 2017

circumstances under which a party is precluded from referring the dispute of arbitration, and as a necessary corollary to it - to seek an appointment of an arbitrator, is whether the said party has submitted his first statement on the substance of the dispute before making an application for referring the dispute forming subject matter of the suit to arbitration. However, this consideration is not a matter to be gone into at the Section 11 stage and could be a relevant factor in deciding an application under Section 8 or before the arbitrator as in my view, it concerns the competence of the arbitral tribunal to decide the referred dispute. The plea of waiver is not a relevant consideration at this stage and hence not decided. Such question of waiver would depend upon evidence to be adduced before the arbitrator or before the Court in an application under Section 8 of Act as the case may be.”

The SLP against the said judgment was dismissed on 15th February 2019 being Special Leave to Appeal (C) No. 4285 of 2019 (Lindsay International Private Limited v TRL Krosaki Refractories Limited).

The decision in **M/s. Motilal Padampat Sugar Mills** (supra) has no manner of application as in deciding the present matter, we are required to be consider Section 4 read with Section 8 of the Arbitration and Conciliation Act, 1996. Both the Sections, if read together, would clearly show that if it appears to the Court at the stage of deciding an application under Section 8 that the applicant has acted in derogation of his right which would, inter alia, include delivering defence on merits either in the form of a written statement or “first statement on the substance of the dispute”, it would clearly evince an intention not to proceed with the arbitration and forfeit the right in future to claim arbitrator.

In view of the fact that the appellants have delivered their defence on merits without reserving the right to refer the dispute to arbitration it can be safely concluded that they have acted in derogation of the right under the arbitration agreement. Accordingly, we do not interfere with the order of the learned Single Judge for the reasons recorded in this order.

Mr. Basu has submitted that any other recourse to safeguard the interest of the appellants may not be foreclosed by this order. Reminding ourselves that a judgment is an authority for what it decides and not what logically follows from it, legal remedies, if any, available to the appellants cannot be foreclosed by this judgment. In this judgment, we are only deciding the matter with regard to the maintainability of the application under Section 8 of the Arbitration and Conciliation Act.

The appeal and the application fail. However there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)