

Item- 12. 29-11-2024

sg Ct. 12

**FMA 1642 of 2003
CAN 1 of 2003 (old CAN 4904 of 2003)**

Promod Mantri
Versus
Pulak Kundu & Ors.

Mr. Suman Ghosh
Mr. Monirujamman
...for the State

1. In spite of service of Administrative Notice, the parties are not represented. However, the State is represented by the learned Counsel.
2. The appeal is of the year 2003. It appears from the report that the notice could not be served upon the respondent 4, 4A and 6. The appeal is arising out of an order passed by the learned District Judge on 23rd May, 2003 in an application under Section 9 of the Arbitration and Conciliation Act.
3. We assume that by this long passage of time, the award must have been passed and this application might have been infructuous for which the parties are not represented.
4. The appellant was the opposite party no.5 in the proceeding under Section 5 of the Arbitration and Conciliation Act before the learned Trial Court. However, we have considered the order wherefrom it appears that the dispute arose with regard to settlement of accounts and pending application under Section 11 of the Arbitration and Conciliation Act. It appears that, in connection with the application, huge money was invested by Sri Pulak Kundu. He was given due share by the other partners and a dispute arose between the partners

with regard to settlement of the accounts inter se.

5. The learned Trial Judge has considered the partnership deed and the case of the petitioner in details and in particular clause 3 of the partnership deed which contains that the partnership firm shall be dissolved on completion of the tender work and settlement of all accounts to the firm. The other partner who is the present appellant has tried to deprive the present petitioner from the due share in terms of the partnership agreement which contains an arbitration clause resulting in filing an application for interim protection.
6. Be it mentioned that the partnership was constituted for the specific purpose i.e. execution and completion of the said tender work and in terms of clause 3 of the said deed, all the partners namely the present respondents have agreed to carry on business of the said contract work in the name and style of M/s. M.K. Gupta & Co. and in clause 9 of the said deed, it has been specifically mentioned that the net profit and loss of the business shall be shared in the proportioned mentioned in the said clause amongst the respondent and the present appellant. In clause 13 of the partnership deed, it was specifically mentioned that the bank account shall be opened with such bank/banks in the name of the firm and the amount shall be operated by the first partner under joint signature of any of its partners i.e. Sri M.K. Gupta, Sri S.N. Gupta, Smt. S. Gupta and Smt. A. Gupta.
7. The learned Trail Judge has taken into consideration the fact that after the partnership firm was awarded contract, work order was issued by the opposite party no.2 in favour of the partnership firm. Sri Mahesh Kumar Gupta executed the

tender work with the assistance of the respondent no.1 with a view to execute the said contract. The said partnership firm was constituted on 11th January, 2001 amongst Sri Promod Mantri, the present appellant, Mahesh Kumar Gupta and present petitioner representing the partnership firm, M/s. M.K. Gupta & Co. The present petitioner having prima facie established that the petitioner has invested huge amount and did not receive due share initially the said proceeding in which he has claimed that he has been mortgaged the property for the purpose of investment.

8. On such consideration, the interim order passed restraining the appellant from receiving payment from the Government respondent against tender word was justified.
9. With the aforesaid observations, the appeal and the connected application are dismissed. However, there shall be no order as to costs.
10. It is needless to mention that save and except the present appellant, other partners of the said partnership firm have accepted the interim measure.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)