

17.12.2024
SI No.3
Court No.37
(gc)

FMAT (ARBAWARD) 20 of 2023

Arun Chakraborty
Vs.
Sudipta Chatterjee & Ors.

1. The appellant is not represented nor any accommodation is prayed for on behalf of the appellant. On the earlier occasion, the appellant was also not represented. In view of our earlier order dated 3rd December, 2024, we consider the matter on merits.
2. It appears that the appellant has preferred this appeal against the order dated 15th May, 2023. On 19th May, 2023, the appeal was lying defective and cured on 11th November, 2024.
3. The appeal is arising out of an order dated 15th May, 2023 passed by the learned Additional District Judge, 6th Court, Alipore, S-24 Parganas in Misc. Case (Arb.) No.73 of 2022 refusing the prayer for extension of ad-interim order of injunction dated 2nd August, 2022. The learned Trial Court has refused to extend the interim order on the ground that the application for appointment of the arbitrator was dismissed for default by the

High Court. The learned Trial Court appears to have proceeded on the basis that the appellant having not taken reasonable steps for appointment of an arbitrator, thus it can be construed that the appellant is not interested to proceed with the arbitration proceeding. Section 9(2) of the Arbitration and Conciliation Act, 1996 requires commencement of the proceedings within a period of 90 days from the date of the order passed under Section 9(2) of the Arbitration and Conciliation Act, 1996.

4. The appellant is not even represented today to demonstrate that the application for appointment of arbitrator has been revived and arbitrator has been appointed. In absence of such order and the unwillingness on the part of the appellant to take steps for commencement of the arbitration and proceed with the arbitration, we are not inclined to admit this appeal, although, we are of the view that merely because an application under Section 11 of the Arbitration and Conciliation Act was dismissed for default, the Court may still continue with the hearing of Section 9 application and pass appropriate orders.

5. In the context of the present case, we are of the view that having regard to the conduct of the appellant in not pursuing his remedy before the arbitral tribunal, the order impugned does not call for any interference.
6. Accordingly, the appeal is dismissed.
7. However, there shall be no order as to costs.
8. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)