

11-07-2024
Item no.7 CD
Subrata
Bhattacharyya
AR(C)

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

FMA No.867 of 2024
Chandra Food Products
-vs-
Sailendra Shaw & Ors.
with
CAN No.1 of 2024

Mr. Pratip Mukherjee
Mr. Jashashwi Sundariya ...for the appellant

Mr. Arpit Agarwal ...for respondents no.3 & 4

An affidavit of service is on record. The respondents no.3 and 4 being the proforma respondents are represented by learned advocate. None appears for the respondents no.1 and 2.

As a very short point is involved and the matter is returnable before the learned trial judge tomorrow, we are minded to dispose of this appeal today itself, dispensing with all formalities.

The respondents no.1 to 4 are partners of the firm Devi Shakti Products. They do business in Kankinara, North 24 Parganas. The appellant is also a partnership firm and has its place of business adjoining M/s. Devi Shakti Products.

Here, they are aggrieved by the impugned order and judgement dated 10th May 2024 made by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in an application under section 9 of the Arbitration and Conciliation Act, 1996. It is ad interim and ex parte. The respondents no.1, 2 and 3 in the section 9 application

before the learned court below were restrained from using the plant and machinery of M/s. Devi Shakti Products.

Mr Mukherjee, learned advocate appearing for the appellant made the following submissions:

- a) His client is not a party to the arbitration agreement.
- b) There have been some transactions concerning plant and machinery between M/s. Devi Shakti Products and M/s. Chandra Food Products. Both the firms are absolutely separate in their composition and in the business carried on by them.
- c) The impugned order would be used by the respondents no.1 and 2 in this appeal to appropriate the assets of the appellant on the pretext that they belong to M/s. Devi Shakti Products.
- d) The application is returnable tomorrow (12th July 2024) before the learned court below.

We direct status quo with regard to the assets of the appellant to be maintained. The appellant is also permitted to carry on business. The learned judge shall deal with all the points narrated above, if taken before her, and dispose of the same after hearing the parties and by a reasoned order.

We are of the view that in the event the court enters into the merits of the dispute, the machinery lying at the premises of the appellant should be properly inventorised and identified to ascertain whether any belongs to M/s. Devi Shakti Products.

The application under Order XXXIX Rule 2A CPC is not to be proceeded with till a prima facie decision is taken in the matter by the learned court below.

The section 9 application should be heard along with any other application which may be pending in the

file of the court below. The order in which the applications are to be considered is left to the learned trial judge. All points are kept open before the trial judge.

This interim order will continue to be operative till the learned judge is able to take a decision in the matter.

The appeal and the connected stay application are thus disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]