

01 22.11.2024

Ct-37

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**In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

FMA 607 of 2023

**Monowara Bibi
Vs.
Ayat Developers & Ors.**

- 1.** The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.
- 2.** The appeal was filed on 10th July, 2023 and thereafter it has not been moved.
- 3.** This appeal is arising out of an order dated 19th May, 2023 passed by the Commercial Court, at Rajarhat, North 24 Parganas, in connection with an application under Section 9 of the Arbitration and Conciliation Act, 1996. The respondent no. 2, who is the present appellant here, is the owner of the adjacent land and the assignee of the respondent no. 1, in the lower court below, on an allegation that she was disturbing the peaceful development of the land of the respondent no. 1. The respondent no. 1 is the owner of the property.
- 4.** It appears that a registered development agreement entered into between the said respondent no. 1 and the developers for the development of the scheduled property for

construction of the multi-storied building where the owner of the property would have 45% share of the constructed area. However, it was alleged that the respondents are trying to disturb the work for carrying on construction, even after receiving Rs.50,00,000/- in terms of the agreement.

5. It was further alleged that the developers invested more than 2 cores in relation to the said agreement and it discharged various obligation under the agreement. It appears that on 19th May, 2023 an ad-interim order was refused in connection with the injunction application. However, on 3rd July, 2023 learned Judge, Commercial Court at Rajarhat after taking into consideration of FMAT (ARBAWARD) 21 of 2023 and after hearing the petitioners and the respondent no. 1 observed that trinity test in the grant of injunction has been decided earlier and, therefore, granted short ad-interim order in terms of prayer (a) of the Section 9 application till 26th July, 2023 by directing the petitioners for effecting service upon the respondent no. 2.
6. The respondent no. 2 appears to be the adjacent land owner. The grievance is that the order was passed without hearing the

respondent no. 2. The order dated 4th July, 2023 of the trial court shows that the present appellant was served in terms of the order dated 3rd July, 2023. The initial interim order was upto 26th July, 2023. Having regard to the fact that the limited interim order passed by the coordinate bench and the respondent no. 1, Mrs. Chaitali Paul, is the owner of the property did not challenge the said order, we dispose of this appeal by directing the Judge, Commercial Court at Rajarhat to dispose of the Section 9 application within two months from the date of communication of this order, after giving reasonable opportunity of hearing to the parties.

7. We direct the Registrar Administration (L & OM) to communicate this order to the Judge, Commercial Court at Rajarhat for information and doing the needful.

8. In view of the above, the appeal being FMA 607 of 2023 stands disposed of.

9. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly disposed of.

10. However, there shall be no order as to costs.

- 11.** Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)