

01.02.2024
SSS (2)

F.M.A.T (ARBAWARD) 33 of 2023

With

CAN 1 of 2023

With

CAN 7 of 2024

Bairy Manohara Swami

Vs.

**The Senior Divisional Commercial Manager,
Eastern Railway**

Mr. Asif Hussain,
Mr. Purnasis Bhuniya, Advs.
.....for the Appellant.

Mr. Rudraman Bhattacharya,
Mr. Sourav Kumar Mukherjee, Advs.
.....for the Respondent.

We formally admit the appeal.

We are in a position to dispose of it dispensing
with all formalities.

The appeal is against an order made under Section
9 of the Arbitration and Conciliation Act, 1996, by the
learned court below.

Now, it is common ground that arbitral
proceedings have started. In that view of the matter, this
court has lost jurisdiction to entertain any issue involved
in the Section 9 application.

We are told that an application under Section 17
of the said Act was made before the learned arbitrator.
When the tribunal was apprised that this appeal was
pending before this court, it did not entertain the matter.

We dispose of this appeal and the connected application (CAN 1 of 2023) and (CAN 7 of 2024) by giving liberty to the appellant/petitioner to pursue the application already filed under Section 17 of the said Act before the arbitral tribunal or to file and pursue a fresh Section 17 application before it on the self same cause of action as in the Section 9 application or the present Section 37 appeal. All points are kept open before the arbitral tribunal. It shall not be guided by any observation made by the learned judge in the Section 9 application.

The status quo as of today will be continued till 29th February, 2024 or until further order to be passed by the learned arbitrator or any other competent authority with jurisdiction.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]