

Item- 12-12-2024
4.

sg Ct. 37

FMAT 386 of 2024
CAN 3 of 2024

NS Developers and Realtors
Versus
Paulis Initiative Private Limited

Mr. Pradip Kumar Roy, Sr. Adv.
Mr. Tirthajit Roy Choudhury
...for the appellant
Mr. Paritosh Sinha, Sr. Adv.
Ms. Soni Ojha
Ms. Sambrita B. Chatterjee
...for the respondent

1. This application is filed for recalling of the order dated 26th November, 2024 on the ground that on the date of hearing, due to lack of knowledge, it was not brought to the notice of this Bench that it has been specifically mentioned in the affidavit-in-opposition that the Barasat Court does not have the jurisdiction to decide the disputes arisen out of an arbitration agreement between the parties.
2. Mr. Pradip Kumar Roy, learned Senior Counsel appearing for the appellant has referred to the pleadings wherefrom it appears that objection was taken with regard to jurisdiction of Barasat Court. However, from the order impugned, it does not appear that any such plea was taken at the time of argument as there is no reflection of an argument in the impugned order. Mr. Roy has referred to paragraph 13 of the impugned order to show that the learned Trial Court has referred to clause 10 of the agreement which contains arbitration clause. It is submitted that once a learned Trial Court has noticed clause 10(i), it must have noticed clause

10(ii) which is a jurisdiction clause and could not have ignored the exclusivity attached to the courts of Kolkata to decide any dispute arising out of the said deed.

3. This issue has been addressed in our order dated 26th November, 2024. However, for the sake of completeness, we may say that it is elementary that the agreement that the parties cannot confer upon the court of jurisdiction which it does not possess. Insofar as the commencement of the arbitral proceeding is concerned, it is being urged that the notice under Section 21 of the Arbitration and Conciliation Act was never served upon the applicant. This issue was also considered and addressed in paragraph 4 of our order. We had extended the time for compliance. Although it is appreciated that the appellant is expected to commence proceeding within a period of 90 days from the date of the order passed in an application under Section 9 of the Arbitration and Conciliation Act, the Court can extend the time and keeping that in mind, we passed consequential direction by appointment of arbitrator and limiting the interim order for a period of three months from 26th November, 2024.
4. We also made it clear that whether the learned Arbitrator shall extend the interim time beyond such period, would be within the domain of the learned Arbitrator and once the Arbitral Tribunal is constituted, the parties are required to approach the said Tribunal for all the reliefs.
5. With such clarification and observation, this application stands disposed of. However, there shall be no order as to costs.

6. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)