

OD-20

ORDER SHEET

AP/92/2024
IA No.GA/1/2024

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

TORAL SHARMA
VS
SRI SOUVIK MUKHERJEE

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 3rd September, 2024.

Appearance:

Mr. Meghajit Mukherjee, Adv.

Mr. Vivek Basu, Adv.

Ms. Sweta Mohanty, Adv.

Ms. Srijeeta Gupta, Adv.

Ms. Sonia Gupta, Adv.

..for the petitioner

Mr. Arif Ali, Adv.

Mr. Sayantak Das, Adv.

Mr. Surojit Saha, Adv.

Mr. Sarban Bhattachajree, Adv

...for the respondent

The Court: The petitioner files the present application (GA/1/2024) substantially under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “the BNSS”) alleging that the applicant in the main petition under Section 9 of the Arbitration and Conciliation Act, 1996 is guilty of perjury. The plinth of such allegation is that the alleged signature of the respondent/present petitioner in the purported Memorandum of

Understanding, which is the basis of the application under Section 9, is manufactured.

Learned counsel places reliance on the report of a forensic expert by the name of one Pradip Kumar Banerjee in support of his contention. Such report has been annexed from page 86 onwards of the present application.

It is further alleged that in three places of the application under Section 9 itself, three different figures in respect of the claim of the petitioner/present respondent have been mentioned.

It is submitted that the same amounts to perjury and appropriate directions be passed within the contemplation of Section 379 of the BNSS.

Learned counsel for the applicant in the Section 9 application vehemently opposes such prayer and submits that even the specimen signatures of the respondent (present petitioner) given to the expert differ among themselves, as is evident from the expert opinion relied on in support of the Section 379, BNSS application.

It is further argued that the subsequent claim made by the applicant in the Section 9 application was less than the initial claim, which variation cannot be termed as perjury.

In any event, it is contended that if the very existence of the arbitration agreement is challenged, the same has to be done before the Arbitrator, as and when appointed.

Heard learned counsel.

A careful scrutiny of the materials on record reveals that even at the first glance, a convincing case under Section 379 of the BNSS has not been made out. Even with the bare eyes of the Court, it is evident that the handwriting of the applicant in his signature in the perjury application on the affidavit page (Page 11 of the perjury application) substantially differs from his subsequent signatures as depicted in the report of the expert.

That apart, there are distinctions between the specimen signatures themselves.

On the whole, it cannot be convincingly said that the signature of the respondent in the Section 9 application differs so remarkably from the specimen signatures that the Court would be of the opinion that it is expedient in the interest of justice that an enquiry should be made under Section 379 of the BNSS.

Insofar as the variations of the figures and amounts claimed by the applicant in different parts of the Section 9 application are concerned, such variations, by themselves, do not tantamount to any perjury on the part of the Section 9 applicant.

At best, it could be open for the Section 9 Court to pass appropriate directions on the Section 9 application due to such variations. However, the high ground of perjury to such an extent that it would require a reference under Section 379, considering the same to be expedient in the interest of justice, is not found to have been made out in the present application.

Accordingly, GA/1/2024 is dismissed.

On the prayer of learned counsel for the applicant in the Section 9 application (AP/92/2024), AP/92/2024 is dismissed as not pressed.

It is, however, made clear that this Court has not entered into a civil adjudication as to the veracity of the signatures on the purported agreement between the parties and the above observations were all rendered in the context of strict proof as required under Section 379 of the BNSS, 2023.

Interim order, if any, stands vacated.

(SABYASACHI BHATTACHARYYA, J.)

bp/R Bhar.