

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/96/2024
SMT NANDITA MISTRY
VS
SANJOY SAHA AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 2nd September, 2024

Appearance:

Mr. Sanjib Bandyopadhyay, Adv.

Mr. Nabhojit Prasad Basu, Adv.

Mr. Manoj Kumar Mondal, Adv.

...for the petitioner.

Mr. Debajyoti Basu, Adv.

Mr. Sbhambhu Chakraborty, Adv.

Mr. Diptomoy Talukder, Adv.

...for the respondents.

The Court:- A preliminary objection is taken by learned counsel for the respondents to the effect that this Court does not have jurisdiction to take up the matter, since Section 29A empowers a 'Court', as defined in Section 2(1)(e) of the Arbitration & Conciliation Act, 1996, to take up applications under the said provision. It is pointed out that previously a suit was filed before the learned District Judge, Malda. Two applications, one under Section 9 and the other under Section 29A, of the 1996 Act had also been filed before the District Judge, Malda.

It is submitted that although the learned Arbitrator was appointed under Section 11 by a co-ordinate Bench of this Court, the same was under the specific powers entrusted on the High Court by Section 11.

Learned counsel for the respondent cites an unreported judgment of the Supreme Court in the matter of *Chief Engineer (NH) PWD (Roads) –versus- M/s.*

BSC & C and C JV in support of his proposition that an application under Section 29-A has to be filed before the principal court of original civil jurisdiction.

Learned counsel for the respondent seeks to argue on other points as well. However, in view of the judgment proposed to be passed, such other points are not entertained.

Learned counsel for the petitioner submits that previously the applications filed before the District Judge, Malda were withdrawn upon imposition of costs. If at the present juncture it is held that this Court does not have jurisdiction, it is submitted that it would be difficult for the petitioner to go back to the District Court.

That apart, it is argued that the provisions of Section 42 of the 1996 Act are not applicable, since the petitioner chose to withdraw the previous applications from the District Court at Malda.

Even without entering into the question as to whether the petitioner was justified in withdrawing the applications under Sections 9 and 29A respectively of the 1996 Act from the Court of the learned District Judge at Malda, at the outset it is seen that in view of the subject-matter of the proposed arbitral dispute falling within the territorial jurisdiction of District: Malda, this Court does not have original jurisdiction to take up the matter.

Although the High Court is specifically empowered under Section 11 of the 1996 Act to appoint an Arbitrator, any application under Section 29A has to go before the jurisdictional Court as defined in Section 2(1)(e) of the 1996 Act. Since the Court of the learned District Judge at Malda is the said jurisdictional Court, this Court does not have any jurisdiction to entertain the present application at all.

This is not a question of applicability of Section 42 of the 1996 Act, which precludes a party from presenting an application to a different Court than the first Court where an application is presented under the 1996 Act, but a question of the original jurisdiction of this Court, which is utterly lacking.

Thus, in view of lack of jurisdiction, AP/96/2024 is dismissed as not maintainable.

It is made clear, however, that the merits of the prayer made in the present application have not been entered into by this Court.

(SABYASACHI BHATTACHARYYA, J.)