

ORDER SHEET

APO/44/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MOHAN TAMANG
VS
WEST BENGAL POLICE HOUSING AND INFRASTRUCTURE DEVELOPMENT
CORP. LTD AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 15th July, 2024.

Appearance:

Mr. Arnab Mukherjee, Adv.

Ms. Shreyasi Manna, Adv.

..for the petitioner

Mr. Sayan Sinha, Adv.

Mr. Steven S. Biswas, Adv.

..for the respondents

The Court: The respondents take a preliminary objection of maintainability.

Heard learned counsel for the parties on such issue.

Although the impugned order is captioned to be one under Section 16 of the Arbitration and Conciliation Act, 1996, the very first sentence of the same shows that the same was rendered on an application for expunging the names of two of the respondents from the array of parties.

The entire order, including its ordering portion, indicates that the said application was allowed, expunging the names of respondent nos.2 and 3.

It is well settled that the caption of an application is immaterial. What is to be looked into is the provision under which the said order was passed.

Section 37 of the Arbitration and Conciliation Act, 1996, in no uncertain terms, provides the orders passed by an arbitral tribunal from which an appeal lies under the said provision to a Court. Sub-clause (a) of sub-section (2) of Section 37 provides that orders accepting the plea referred in sub-section (2) or sub-section (3) of Section 16 are appellable.

Although erroneously captioned before the Arbitrator, the application was not under Section 16, which contemplates challenges regarding competence of the arbitral tribunal to rule on its jurisdiction.

In fact, it appears from a perusal of the records that although the application filed before the tribunal was wrongly captioned under Section 151 of the Code of Civil Procedure, the arbitral tribunal proceeded on the premise that the application was one under Section 16 of the 1996 Act.

Be that as it may, since the impugned order was not passed under Section 16 and is not appellable under Section 37, the objection as to the maintainability is sustained.

Accordingly, APO/44/2023 is dismissed as not maintainable, without any order as to costs.

It is made clear that nothing in this order shall prevent the petitioner from challenging the order of the arbitrator impugned herein in connection with a final challenge under Section 34 against the award passed in the arbitral proceeding, if the petitioner is so entitled otherwise in law.

(SABYASACHI BHATTACHARYYA, J.)