

ORDER SHEET

AP/141/2024

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

TATHAGATA MULLICK AND ANR.
VS
ANNESHAN MUKHERJEE

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 1st October, 2024.

Appearance:

Mr. Jayanta Sengupta, Adv.

Ms. Shebatee Datta, Adv.

..for the respondent

The Court: None appears to move the matter at the time of call.

Learned counsel having instructions to appear for the respondent submits that no copy of the application has been served on him or his client.

The application has been captioned as one under Section 12 of the Arbitration and Conciliation Act, 1996 with a prayer for removal of the learned Arbitrator taking up the arbitral proceedings between the parties.

Despite having gone through the relevant provisions of law, I fail to convince myself that there is any scope under the statute for filing an application under Section 12 of the 1996 Act before this Court. In fact, Section 12 merely enumerates the grounds for challenge to an Arbitrator. The challenge procedure is laid down in Section 13, which provides that the parties are free to agree on a procedure for challenging the Arbitrator. However, no such procedure has been disclosed in the present application.

Failing any agreement referred to in Sub-Section (1) of Section 13 as indicated above, a party intending to challenge an Arbitrator has to send within 15 days after becoming aware of the constitution of the arbitral tribunal or of any circumstance referred to in Section 12(3) a written statement of the reasons for the challenge to the arbitral tribunal. It is left to the Arbitrator, to whom the said written statement is sent, either to withdraw from his office or to decide on the challenge. If the challenge is not successful, the Tribunal shall continue the arbitral proceedings and make an arbitral award under Section 13(4) of the 1996 Act.

As such, there is no scope of preferring an interim challenge during the pendency of the arbitral proceeding to such refusal by the Arbitrator to accede to such challenge. Sub-Section (5) of Section 13 provides that where an arbitral award is made under Sub-Section (4) of Section 13, the party challenging the Arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34. Again, Sections 14 and 15 contemplate situations where the Arbitrator becomes *de jure* or *de facto* unable to perform his functions or withdraws from his office.

There having been disclosed no such circumstance, there is no scope of entertaining a challenge under Section 12 of the 1996 Act as such. Hence, the present application is palpably misconceived and frivolous.

Hence, AP/141/2024 is dismissed as not maintainable, without, however, any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)