

AD-31
Ct No.16
25.03.2025
TN

FMAT 248 of 2024
IA No: CAN 1 of 2022

Sudipto Sen
Vs.
Bandhan Bank Limited and others

Mr. Rajnil Mukherjee,
Ms. Satabdi Dey,
Mr. Subhas Das

....for the appellant

Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee

....for the respondent nos.1 & 2

1. The present appeal has been preferred against an order whereby the appellant's challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") has been dismissed on the ground of lack of jurisdiction by invoking Section 42 of the 1996 Act, in view of an earlier application under Section 9 of the said Act having been presented before a different court.
2. Learned counsel for the appellant argues that the said application under Section 9 of the 1996 Act was dismissed for default and, as such, was not adjudicated on merits. Hence, Section 42 ought not to be invoked.
3. However, we do not find any substance in such contention, since the relevant factor within the contemplation of Section 42 is not the nature of the dismissal of a prior application but the presentation of the prior application before a competent court.

4. Section 42 of the 1996 Act, pertaining to jurisdiction, provides that where with respect to an arbitration agreement any application under the said Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.
5. In the present case, since the appellant himself had made an application under Section 9 before a different court, it is the said prior court which has jurisdiction, and not the court which passed the impugned order.
6. Accordingly, there is no scope of interference in the appeal.
7. Hence, FMAT 248 of 2024 is dismissed on the principle of XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2022 also stands dismissed without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)