

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT 153 of 2025
With
CAN 1 of 2025

Suniti Ranjan Mondal @ Sunity Ranjan Mondal
Vs.
Asi Ranjan Mondal

For the appellant : Mr. Arijit Bardhan,
Mrs. Tapati Samanta,
Mr. Arindam Ghosh, Advs.

For respondent : Ms. Juin Dutta Chakraborty, Adv.

Heard on : October 28, 2025.

Judgment on : October 28, 2025.

Sabyasachi Bhattacharyya, J.:

1. In view of the short point involved, we take up the appeal itself for hearing.
2. By the impugned judgment and decree, a suit filed by the plaintiff/appellant, *inter alia* for declaration, partition and

dissolution of a partnership, was dismissed on the ground that the same was barred under the Arbitration and Conciliation Act, 1996.

3. Upon hearing learned counsel for the parties, we find that the impugned judgment is not only based on absurd logic but is palpably *de hors* the law. The learned Trial Judge proceeded on the premise that since there was an arbitration clause in the partition deed between the parties, the provisions of Section 42 of the 1996 Act apply and in view of the same, the suit is not maintainable before the Civil Court in its present form.
4. We are at an utter loss as to how the learned Trial Judge could come to such findings. The learned Trial Judge referred to Section 42 of the 1996 Act which stands on an entirely different footing than that construed by the learned Trial Judge. Section 42 pertains squarely to applications coming within the purview of the 1996 Act and stipulates that where, with respect to an arbitration agreement, any application under the concerned part of the 1996 Act 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. It is nobody's case that any previous application under the 1996 Act was filed before any other court, nor was the suit, which has been dismissed by the impugned judgment, an "application" under the 1996 Act.

5. Furthermore, there was no application filed under Section 8 of the 1996 Act by the defendants. It is well settled that the arbitrability of a dispute between the parties being based on consent, it is open to the parties to waive the said arbitrability and choose to, subject themselves to the jurisdiction of a regular civil court. In the absence of a specific application under Section 8 of the 1996 Act, there is no scope for the civil court to relegate a matter to arbitration.
6. We find from a cursory perusal of the impugned judgment that the same proceeded on an entirely erroneous and tangential premise by treating the suit to be not maintainable in view of the application of Sections 2, 7 and 42 of the 1996 Act which are not applicable by any stretch of imagination to the present suit. Thus, the impugned judgment and decree are patently erroneous and ought to be set aside.
7. Accordingly, FAT 153 of 2025 is allowed on contest, thereby setting aside the judgment and decree dated December 23,

2024 passed by the learned Civil Judge (Senior Division), First Court at Uluberia, District – Howrah in Title Suit No. 122 of 2017 and remanding the matter to the learned Trial Judge for a fresh adjudication on merits in accordance with law in the light of the observations made above.

8. It is, however made clear that this court has not entered into the merits of the respective contentions of the parties in the suit and the learned Trial Judge shall proceed with the hearing of the suit in due process of law by framing issues and giving opportunity of adducing evidence and of hearing to both sides.
9. CAN 1 of 2025 also stands disposed of accordingly.
10. There will be no order as to costs.
11. A formal decree be drawn up accordingly.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)