

04. 10.06.2025
Court No.37
(Tanmoy)

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
APPELLATE SIDE**

AO-COM/11/2025

IA No: CAN/1/2025

RAJDIP GIRI

-Versus-

M/S JAY BRICKS MANUFACTURING CO. AND ANR.

Ms. Pompey Bose, Adv.,
Mr. Anjan Banerjee, Adv.

...for the appellant.

Mr. Swatarup Banerjee, Adv.,
Mr. Ratul Biswas, Adv.,
Mr. Durlav De, Adv.

...for the respondent no.2.

Dictated by Arijit Banerjee, J.

1. By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

2. This appeal is directed against an order dated April 11, 2025, whereby the learned Judge, Commercial Court at Alipore, refused to pass an *ex parte ad interim* order of injunction on the appellant's application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'), being Misc. Arbitration (Com) 20 of 2025.

3. The appellant says that although he is a partner of the concerned firm holding majority share, he has been ousted from the business of the firm. He is not allowed to participate in the

business or enter the firm's office. He prays for an immediate order directing the other partners of the firm to permit him to participate in the affairs of the firm.

4. We find from the order impugned that the learned Trial Court, after considering the submission of the appellant/petitioner, recorded its finding that no case for *ex parte ad interim* order of injunction had been made out. It is a reasoned order. We do not find any perversity or material irregularity in the order.

5. The learned Trial Court directed notice to be served on the respondents/opposite parties. The application under Section 9 of the 1996 Act is still pending before the learned Trial Court.

6. More importantly, by an order dated April 10, 2025, a learned Judge of this Court, on an application under Section 11 of the 1996 Act, has appointed a sole Arbitrator for adjudication of the disputes and differences between the parties. The order dated April 11, 2025, which is sought to be assailed before us, does not reflect that the learned Trial Court was informed that an arbitral Tribunal is already available. However, we do not go into the question of suppression of material facts or otherwise as the same may not be necessary immediately.

7. In view of the fact that the application under Section 9 of the 1996 Act is still pending and additionally, the arbitral Tribunal has already been constituted before which the appellant may make his prayer for *interim* relief, we are not inclined to pass any order on this appeal which accordingly stands disposed of along with the connected application being IA No: CAN/1/2025.

8. Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

9. Nothing in this order will prevent the appellant from renewing his prayer before the learned Trial Court or approaching the arbitral Tribunal for *interim* relief, in accordance with law. If so approached, the learned Trial Court or the arbitral Tribunal, as the case may be, shall consider and decide the appellant's prayer strictly in accordance with law, without being influenced by any observation in this order.

10. Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)