

11.09.2025
Item No.03
Court No.37.
S. De
266311

F.M.A.T. (ARBAWARD) 41 of 2025
With
I.A. No. CAN/1/2025
I.A. No. CAN/2/2025

Sri Kartick Chakraborty & Anr.
Vs
Sikha Kumar & Ors.

Mr. Shyamal Mukhopadhyay,
Ms. Priyanka Chatterjee, ...for the appellants.

Mr. Shambo Chakraborty,
Mr. Jit Ray, ...for the respondents.

Dictated by Arijit Banerjee, J.

In re : I.A. No. CAN/2/2025

1. This is an application for condonation of delay of 117 days in filing the appeal. Causes shown being sufficient, the delay is condoned.
2. I.A. No. CAN 2 of 2025 is, accordingly, disposed of.

In re : F.M.A.T. (ARBAWARD) 41 of 2025 &
I.A. No. CAN/1/2025

3. By consent of the parties, the appeal and the connected application are taken up together for hearing.
4. This appeal is directed against an order dated December 4, 2024, passed by the learned District Judge, Howrah, in Misc. Case No.267 of 2023, being an application under Section 9 of

the Arbitration and Conciliation Act, 1996, filed by the appellants herein.

5. It appears that there was a development agreement to which the appellants and the respondents were parties. The agreement contained an arbitration clause for resolution of possible disputes and differences between the parties.
6. It appears that, disputes arose between the parties and the appellants herein approached the learned Trial Court with an application under Section 9 of the 1996 Act praying for interim relief.
7. From the order impugned, it appears that on August 30, 2024, the appellants were absent before the learned Trial Court. On that date an order was passed by the learned Trial Court directing the appellants to show-cause on November 7, 2024, as to why the Section 9 application should not be dismissed. On November 7, 2024 also, the appellants herein did not appear before the learned Trial Judge.
8. On December 4, 2024, i.e. the date of dismissal of the Section 9 application, the appellants filed a show-cause petition seeking to explain why they could not appear before the learned Trial Court on November 7, 2024. There was no

explanation for their absence on August 30, 2024. The learned Trial Judge observed that the show-cause filed by the petitioners is not satisfactory and the same was rejected. In the said background, the impugned order was passed, the operative portion whereof reads as follows :

“It comes out from record that it is a case under Section 9 of the Arbitration and Conciliation Act and ad interim order of injunction was refused vide order no.02 dated 23.11.2023 and from the said order as well as from the said Development Agreement it comes out that in the Development Agreement it is clearly mentioned in Article XV that after demise of Ashim Kumar (the original owner), the agreement shall stand cancelled and in the meantime, he died. Moreover, as per the submission of the learned Advocate of the respondents, no Arbitration Proceeding has been filed till date. Under such circumstances, I must constrained to observe that this case has now no leg to stand upon. Accordingly, it is

O R D E R E D

that the Misc. Case No.267 of 2023 is dismissed on contest being

infructuous. The Misc. Case is thus disposed of.”

9. Being aggrieved, the petitioners before the learned Trial Court have come up by way of this appeal.

10. We have heard learned counsel for the parties.

11. It appears that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the present appellants on September 15, 2023, calling upon the respondents herein to agree to the name of an arbitrator suggested by the appellants herein. The respondents did not agree to that name. The appellants herein did not take any further step for appointment of arbitrator. Instead they approached the learned Trial Court with the Section 9 application. Their prayer for ex parte ad interim order was refused by an order dated November 23, 2023. The appellants did not challenge that order before any higher forum. Thereafter, the appellants defaulted in appearing before the learned Trial Court on at least two occasions as noted above. They could not explain sufficiently or at all as to why they were absent.

12. The learned Trial Judge rejected the explanation furnished by the appellants. The learned Judge also noted that the appellants herein have not taken requisite steps for appointment of arbitrator. Accordingly, the Section 9 application was dismissed.

13. We see no apparent infirmity in the order under appeal. After issuing the notice dated September 15, 2023, ostensibly under Section 21 of the 1996 Act, and finding that the respondents did not agree to the name of the arbitrator suggested by them, the appellants ought to have approached the High Court with an application under Section 11 of the 1996 Act for appointment of arbitrator. The appellants did not do so. Even today, there is no such initiative on the part of the appellants. Therefore, the conduct of the appellants does not show that they are seriously interested in initiating arbitral proceedings. If that be so, no relief under Section 9 can be granted to them.

14. The appeal being FMAT (ARBAWARD) 41 of 2025 is, accordingly, dismissed along with the application being I.A. No. CAN 1 of 2025.

15. This will not prevent the appellants from taking recourse to Section 11 of the 1996 Act and also to Section 17 of the 1996 Act after

constitution of arbitral Tribunal, in accordance with law.

16. We only clarify that if the appellants file any other proceedings in connection with the development agreement before any other forum, such proceedings will be decided by that forum without being influenced by any observation in this order.

17. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)