

01. 10.07.2025
Court No.37
(Tanmoy)

FMA/1245/2024

IA No: CAN/1/2024

**M/S THE GRAND ENGINEERING CONSULTANCY AND ANR.
-Versus-
M/S JRA INFRATECH & ANR.**

Mr. Pratip Mukherjee, Adv.
Mr. S.M. Ismail, Adv.
Mr. Mukteswar Maity, Adv.

...for the appellants.

Mr. Chittapriya Ghosh, Special Officer.

Dictated by Arijit Banerjee, J.

1. By consent of the appellants, the appeal and the connected application are taken up together for hearing.
2. Read orders dated June 10, 2025 and July 8, 2025.
3. Today also, nobody appears for the respondent or the pro-forma respondent.
4. Learned Advocate for the appellants tells us that the respondent was not represented before the learned Trial Court. The pro-forma respondent was, however, represented.
5. The learned Trial Court dismissed the appellants' application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'), solely on the ground

of lack of territorial jurisdiction. According to the learned Trial Judge, since the seat of arbitration has been agreed upon to be Ranchi, the Asansol Court would not have jurisdiction.

6. We are of the view that the learned Judge erred in so holding. The learned Trial Judge did not advert to Section 2(1)(e) of the 1996 Act which reads as follows:-

2. Definitions. – (1) ...

(e) “Court means –

- (i) *in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes; ...”*

7. Going by the aforesaid definition of the Act, the Asansol Court would be the appropriate Court since the entire cause of action arose in the district of Murshidabad. Commercial disputes arising in Murshidabad would have to be adjudicated by the Commercial Court in Asansol. Hence we set aside the order under appeal.

8. Given the conduct of the respondent, who has very carefully avoided this Court, we are of the

view that the learned Special Officer should take actual physical possession of the equipment and machinery in question, of which inventory has been made by the learned Special Officer.

9. Accordingly, we direct the learned Special Officer to take actual physical possession of the concerned equipment and machinery and hand over the same to the appellants who will keep the same in safe custody till the disputes between the parties are decided by the Arbitral Tribunal.

10. It is made clear that till an Award is passed in favour of the appellants, if at all, or without the leave of the Arbitral Tribunal, the appellants shall not deal with or dispose of the machinery and equipment in question. The appellants may, however, utilize the same in the usual course of business.

11. The appellants shall make all arrangement for the learned Special Officer to travel to the concerned locale for taking actual physical possession of the subject machinery and equipment. The learned Special Officer will be paid a further and final remuneration of Rs.35,000/- (Rupees Thirty Five Thousand) by the appellants. Upon handing over the machinery and equipment

to the appellants, the Special Officer shall stand discharged.

12. If the learned Special Officer apprehends any kind of resistance or violence, he will be at liberty to approach the jurisdictional Police Station for help as also the concerned Military Authorities. If so approached, the Officer-in-Charge of the jurisdictional Police Station as also the concerned Military Authorities shall extend all co-operation and grant necessary protection to the Special Officer and the representatives of the appellants for the purpose of implementation of this order.

13. The appeal being FMA/1245/2024 and the connected application being IA No: CAN/1/2024 accordingly stand disposed of.

14. 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.)