

**Item 14.01.
No. 2025
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**Ct
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3752 of 2023

**Sanjoy Saha
Vs
Nandita Mistri**

Mr. Debajyoti Basu,
Mr. Diptomoy Talukder,
Mr. D. Ghosh

... for the petitioner.

Mr. Debanik Banerjee,
Mr. Steven S Biswas,
Mr. Shibaditya Das Sharma,
Ms. Huzaifa Shahid

... for the opposite party.

1. This revisional application has been filed assailing the order dated 15th May, 2023, wherein Learned Judge (Senior Division), 1st Court, Malda passed an order fixing date for ex parte hearing of the suit without hearing the application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 on account of non-submission of written statement.
2. Both the learned counsel appearing on behalf of the parties to this revisional application are ad idem of fact that the Learned Trial Judge should have heard the application under Section 8 read with Section 5 of the Arbitration and Conciliation

Act, 1996 prior to asking the defendant to file written statement.

3. Section 8 of the Arbitration and Conciliation Act, 1996 mandates the following:

“8. Power to refer parties to arbitration where there is an arbitration agreement.- (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that court.)

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

4. Considering the provision envisaged under Section 8 of the Arbitration and Conciliation Act, in my opinion, the Learned Judge has no option but to hear the application under Section 8 read with Section 5 of the Arbitration and Conciliation Act,

1996 and decide whether there was any arbitration agreement between the parties and if that be so Learned Judge has no other option but to refer the parties to arbitration.

5. In the aforesaid view of the matter, the order impugned stands set aside with a direction upon the Learned Judge to hear the application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 within two weeks from the date of communication of this order without being influenced by any of the observations of this Court.
6. In the aforesaid view of the matter, the revisional application stands disposed of.
7. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
8. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)