

04 16.01.2025

Ct-37

ar

FMAT 424 of 2024

with

IA No. CAN 1 of 2024

J.C Properties Pvt. Ltd.

Vs.

Diamond Tannery and Co. & Anr.

Mr. Samrat Chowdhury

Mr. Paroma Sengupta

... For the Appellant

Mr. Sarvapriya Mukherjee

Mr. Pourush Bandyopadhyay

Mr. Arijeet Bera

... For the Respondents

1. The appeal is arising out of an order dated 18th March, 2023 passed in a suit filed by the plaintiff in respect of development agreement dated 19th March, 2018 and supplementary agreement dated 1st February, 2019. The said agreement contains an arbitration clause. However, learned Single Judge proceeded on the basis that having regard to the nature of the claim made in the plaint the arbitration clause is not attracted overlooking the fact that the arbitrator is clothed with the jurisdiction to decide any dispute arising out or in connection with the said development agreement.

2. Learned counsel for the respondents has submitted that in the recent judgment the Hon'ble Supreme Court has given a guideline with regard to the application seeking reference to arbitration is required to be considered in the case of **Gujarat Composite Ltd. Vs. A Infrastructure Ltd & Ors.,**

reported in **(2023) 7 SCC 193**. From the impugned order we do not find any such issue was referred or discussed in the order under challenge.

3. In view thereof, we set aside the order dated 18th March, 2023 and direct the learned Trial Court to decide the application afresh as it has been urged that there are other parties in the suit who are not the parties in the arbitration agreement and subject matter of the suit and the subject matter of the arbitration are different. However, it is undisputed that for the purpose of establishing the right, the plaintiff would be required to refer the development agreement and the supplementary agreement and in that conspectus of fact it would be seen that whether the suit is required to be stayed and the parties are required to refer to the arbitration.

4. In view of the fact that the said applications being Section 5 and Section 8 of the Arbitration and Conciliation Act are required to be heard afresh, we permit the respondents/plaintiffs to file affidavit-in-opposition to the said applications within two weeks from date and reply, if any, be filed within two weeks thereafter.

5. We request the learned Trial Court to fix the matter after completion of all pleadings and decide

the matter in accordance with law.

6. In view of the above, the appeal being FMAT 424 of 2024 stands disposed of along with CAN 1 of 2024.

7. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)