

Items 5. 16-01-2025

**FMAT 502 of 2024
CAN 1 of 2024**

^{sg} Ct. 37

Alpana Naskar & Ors.
Versus
Dibyendu Mukherjee

Mr. Shashwat Nayak
Mr. Aurin Chakraborty
Mr. Sumit Biswas
Ms. Rajashree Bhowmick
...for the appellants

Mr. Vivekandanda Bose
Mrs. Saheli Mukherjee
Mr. Pryanka Das Nayak
...for the respondents

1. The affidavit of service filed in Court is taken on record.

2. The appeal is arising out of an order dated 27th November, 2024 passed by the learned Additional District Judge, 11th Court, Alipore in connection with a Misc Case filed under Section 9 of the Arbitration and Conciliation Act, 1996.

3. It appears that the interim order was passed on 21st December, 2023, however, no Arbitrator has been appointed by the parties in the meantime. The learned Court has fixed 17th January, 2025 by directing the parties to take necessary steps for appointment of an Arbitrator as mentioned in the Arbitration Clause of the development agreement and to inform the Court about the same on 17th January, 2025.

4. The learned Counsel appearing on behalf of the appellants has submitted that the interim measure of protection under Sub-section 1 would mean the first order when such interim protection was granted and having regard to the fact the

period of 90 days from the date of such order had expired unless the Court is satisfied that the said time is required to be extended notwithstanding the existence of the Arbitration Clause, the efficacy of the order under Section 9 of the Arbitration and Conciliation Act, 1996 would be lost.

5. The learned Counsel for the respondents has submitted that the said section does not contemplate that with the expiry of 90 days, the order would automatically stand vacated and the record would not show that the opposite parties were not diligently pursued the case.

6. On the basis of the submission, we request the learned Trial Court to consider whether the Trial Court would give any further extension of time for appointment of an Arbitrator in view of the pendency of the matter and that the said application is still pending for final adjudication.

7. We make it clear that the pendency of this matter, however, shall not prevent the parties to arrive at an amicable settlement in the meantime.

8. With the aforesaid observations, the appeal and the application are disposed of. However, there shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)