

In The High Court at Calcutta

**Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F.M.A. 223 of 2021

IA NO: CAN/2/2025

Laxmi Pat Surana

vs.

The Union of India

For the Appellant : Mr. Arindam Paul, Advocate

For the Respondent : Mr. Bipul Kumar Mandal, Advocate
Mr. Subrata Samanta, Advocate

Heard on : 12.03.2026

Judgment on : 12.03.2026

DEANGSU BASAK, J.:-

1. CAN/2/2025 is an application seeking restoration of the appeal which was dismissed for default on December 11, 2025.

2. For the ends of justice, causes shown in the application for restoration are accepted as sufficient. Order dated December 11, 2025 dismissing the appeal for default, is recalled.
3. CAN/2/2025 is allowed.
4. F.M.A.223 of 2021 is restored to its file and number.
5. Appeal is at the behest of a claimant and directed against an order of dismissal of the application under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the claimant.
6. By the impugned order and judgment dated December 4, 2020 passed in Misc.Case (Arbitration) 40 of 2019, learned Trial Judge dismissed the application under Section 34 of the Act of 1996.
7. Learned advocate appearing for the appellant submits that, disputes between the parties were referred to the arbitration of one Mr. M. Alam. Subsequently, under Section 11 of the Act of 1996, by an order dated November 24, 2011, the High Court, referred the disputes to such person as the Arbitrator. However, such person, superannuated from service. On such superannuation from service, such person was relieved of the duties of the Arbitrator and a new person was appointed as Arbitrator who passed the award. Consequently, he submits that, the award is non est in law since the arbitrator was appointed by the High Court did not pass the award.

8. It appears from the records that, one Mr. M. Alam was appointed as the Arbitrator to arbitrate on the disputes between the parties by a letter dated August 11, 2011. Subsequent to the appointment of such Arbitrator, in a petition being A.P. 731 of 2011 filed by the appellant, under Section 11 of the Act of 1996, the High Court, noted that, existence of arbitration agreement was not in dispute. High Court also noted that, the parties contend that, there are claims which are covered by the arbitration agreement. It is also noted that, the arbitration agreement required the appointing authority to make the appointment. High Court permitted the parties to carry their respective claims before the Arbitrator as appointed by the appointing authority.
9. The appointing authority was the respondent. Appointing authority as noted above appointed Mr. M. Alam by the letter dated August 11, 2011.
10. Order of the High Court under Section 11 of the Act of 1996 merely acknowledged the appointing procedure and permitted the parties to carry their disputes to the Arbitrator so appointed. High Court did not appoint the Arbitrator. Arbitrator was appointed in terms of the appointment procedure prescribed. Contention of the appellant to the contrary cannot be accepted.
11. Mr. M. Alam superannuated from service. Mr. M. Alam expressed his desire not to proceed with the arbitration and inform

the same to the appointing authority. The appointing authority by a letter dated July 30, 2015 appointed a new Arbitrator.

12. Before the new Arbitrator, a petition was filed at the behest of the claimant challenging his appointment. Such petition was disposed of by the new Arbitrator by an order dated June 30, 2016. In such order, learned Arbitrator found that, the erstwhile Arbitrator namely, Mr. M. Alam superannuated from service on June 30, 2015. Mr. Alam prior to his superannuation requested the appointing authority to relieve him of the duties of the Arbitrator due to his retirement. Learned Arbitrator found that, Mr. M. Alam became unable to perform his duties and therefore his mandate stood terminated in terms of Section 14(1)(a) of the Act of 1996. On termination of the mandate of the sole Arbitrator the appointing authority was obliged to appoint a new Arbitrator under Section 15(2) of the Act of 1996 which the appointing authority did. Consequently, the new Arbitrator rejected the challenge.
13. We find that, the view expressed by the Arbitrator, in the order dated June 30, 2016 is plausible view.
14. No other points are canvassed before us on merits with regard to the respective claims in the arbitration proceeding.

15. Our remit under Section 37 of the Act of 1996 to evaluate as to whether or not the Court under Section 34 of the Act of 1996 applied the correct parameters.
16. In the facts and circumstances of the present case, nothing is placed before us to suggest that parameters under Section 34 of the Act of 1996 was incorrectly applied by the learned trial Judge.
17. In such circumstances, **FMA 223 of 2021** stands **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)