

OCD-9

APOT/82/2025
With
AP-COM /1068/2024
IA NO: GA-COM/1/2025

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE

SIVA STORES AND ORS.
-VS-
URGO CAPITAL LIMITED

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE OM NARAYAN RAI
Date : 5th May, 2025.

Appearance:
Mr. Sourajit Dasgupta Adv.
Mr. Pujon Chatterjee, Adv.
Mr. Aniket Chaudhury, Adv.
Mr. Sutosom Bhattacharyya, Adv.
...for the appellant

Mr. Paritosh Sinha, Adv.
Mr. K. K. Pandey, Adv.
Mr. Ritoban Sarkar, Adv.
Ms. Pooja Sett, Adv.
Ms. Mallika Bothra, Adv.
...for the respondent

The Court: By consent of the parties, the appeal and the connected application are taken up together.

This appeal is directed against a judgment and order dated February 19, 2025, whereby the respondent's application under Section 9 of the Arbitration and Conciliation Act, 1996 was disposed of by restraining the present appellants from dealing with, transferring, alienating or changing the nature and character of the secured assets.

Learned advocate for the appellants says that before the impugned order was passed, the Learned Judge ought to have recorded at least a prima facie satisfaction of the existence of an undisputed arbitration clause and that there is a prima facie case for granting injunction. The same not having been done, the order impugned ought to be set aside.

We see that on the day the impugned order was passed, nobody appeared for the present appellants before the Learned Single Judge. The Learned Judge noted that on an earlier occasion a learned advocate had appeared through video conferencing facility. On the day the impugned order was passed, the appellants herein, being the respondents before the Learned Single Judge, were not represented.

Since the appellants herein chose not to appear before the Learned Single Judge on the day the impugned order was passed, we are not inclined to interfere with the order. This will not prevent the appellants from approaching the Learned Single Judge with an appropriate application, if they are so advised.

This order will also not prevent the appellants from urging all points including the point of existence of a valid arbitration clause before the arbitral forum or any other forum that may be available to the appellants in accordance with law.

APOT/82/2025 along with IA NO.GA-COM/1/2025 are disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)