

OCD-5 & 6

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE

APO/130/2023
WITH
AP/369/2023

M/S. BINOY TRADING CO. AND ANR.
VS
TATA MOTORS FINANCE LIMITED

WITH

APO/163/2023

M/S. BINOY TRADING CO.
VS
TATA MOTORS FINANCE LIMITED

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE OM NARAYAN RAI
Date : 28th July, 2025.

Appearance:

Mr. Shyamal Chakraborty, Adv.
Mr. Jayanta Kumar Dhar, Adv.
..for the appellant

Mr. Rohit Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Saubhik Chowdhury, Adv.
Ms. Tapasika Bose, Adv.
..for the respondent

Dictated by Arijit Banerjee, J.

The Court: These two appeals arise out of two arbitration petitions whereby the appellants challenged two arbitral awards passed in favour of the present respondent by a learned sole Arbitrator. The Learned Single Judge dismissed the two applications under Section 34 of the Arbitration and Conciliation Act, 1996, not on merits but on the ground that the same were not maintainable in the High Court. This is because prior to the setting aside applications being filed, the respondent herein had approached the City Civil Court at Calcutta with post-award Section 9 applications for interim orders to protect the vehicles of the respondent which were in the possession of the present appellants under loan-cum-hypothecation agreements. Such applications under Section 9 were entertained by the Learned City Civil Court and protective orders were also passed. The present appellants approached the Learned City Civil Court with applications for vacating the interim orders passed in favour of the finance company.

In the above factual background, the Learned Single Judge held that in view of Section 42 of the 1996 Act, Learned City Civil Court at Calcutta is clothed with exclusive jurisdiction to entertain all further applications arising out of the concerned arbitration agreements. Accordingly, the Learned Judge dismissed the two arbitration petitions. Being aggrieved, the petitioners before the Learned Single Judge are before us by way of these appeals.

Section 42 of the Arbitration and Conciliation Act, 1996 reads as follows:-

“42. Jurisdiction. – *Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court”.*

Learned Senior Counsel appearing for the appellants raised various grievances. He said that firstly, the appointment of Arbitrator was made unilaterally. No consent of the appellants was obtained. No notice of arbitration was served on the appellants. The appellants had no opportunity to contest the claim of the finance company. Therefore, the awards are not sustainable in the eye of law.

All these points the appellants would be entitled to urge before the forum having jurisdiction to entertain their challenge to the concerned arbitral awards. In view of the clear wordings of Section 42 of the 1996 Act, which was incorporated in the statute to avoid conflict between Courts, it is the City Civil Court alone which is competent to entertain the setting aside applications of the appellants herein. Hence, the Learned Judge was perfectly justified in dismissing the applications of the appellants as not being maintainable in this Court.

The contention of the appellants that the City Civil Court does not have pecuniary jurisdiction in the matter is also devoid of merits. The Learned Judge

has dealt with this point in the judgment and order impugned before us and we agree with the conclusion of the Learned Judge.

In view of the aforesaid, we find no reason to interfere with the judgment and order sought to be assailed before us. We affirm the impugned judgment and order to the extent it holds that the setting aside applications were not maintainable before this Court.

We have not gone into the merits of the challenge of the petitioners to the arbitral awards in question. If the appellants are entitled to challenge the arbitral awards before the appropriate forum in accordance with law, they shall be at liberty to do so. If such a forum is approached by the appellants, we request such forum to decide the appellants' challenge in accordance with law, upon hearing all parties, without being influenced by any observation in this order.

Mr. Chakraborty, learned Advocate for the appellants, says that we should grant the appellants the benefit under Section 14 of the Limitation Act. We are not inclined to do so in these proceedings. However, if such point is raised before the forum which the appellants may approach, that forum shall decide the same in accordance with law.

Both the appeals being APO/130/2023 and APO/163/2023 are disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)