

**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

FMAT (ARBAWARD) 1 of 2026

with

IA No.: CAN 1 of 2026

IA No.: CAN 2 of 2026

Chandra Saha & Anr.

Vs.

A.S. Construction & Ors.

with

FMAT (ARBAWARD) 2 of 2026

with

IA No.: CAN 1 of 2026

Chandra Saha & Anr.

Vs.

A.S. Construction & Ors.

For the Appellants : Mr. Sourav Kumar Mukherjee, Advocate
Ms. Sahana Pal, Advocate
Mr. Souhardya Mitra, Advocate
Mr. Malay Bhadra, Advocate

For the Respondents : Mr. R. Chatterjee, Advocate
Ms. Sohini Choudhury, Advocate

Hearing & Judgment on : **May 12, 2026**

DEBANGSU BASAK, J.:-

1. IA No.: CAN 1 of 2026 is an application for condonation of delay in making and preferring the appeal being FMAT (ARBAWARD) 1 of 2026.
2. Department reports that the delay is of 535 days.

3. For the ends of justice, the causes shown in the application for condonation of delay are accepted as sufficient.
4. The delay of 535 days in making and filing the appeal is condoned.
5. IA No.: CAN 1 of 2026 in FMAT (ARBAWARD) 1 of 2026 is allowed.
6. Two appeals are taken up for analogous hearing as they emanate out of the same proceedings.
7. FMAT (ARBAWARD) 1 of 2026 is directed against the Order No.19 dated May 4, 2024 passed in Misc. Case No.17 of 2022 (Arbitration) by the learned Additional District & Sessions Judge, Fast Track Court-5, Barasat, North 24-Parganas. Such appeal is referred to as the first appeal for the sake of convenience hereinafter.
8. FMAT (ARBAWARD) 2 of 2026 is directed against the Order No.09 dated December 15, 2025 passed in Misc Case No.171 of 2024 by the learned Additional District Judge, Fast Track Court 5, Barasat, North 24-Parganas. For the sake of convenience, it is referred to as the second appeal.
9. Both the appeals are at the behest of the same appellants. The respondents are the same in the two appeals.
10. Learned Advocate appearing for the appellants in both the appeals submits that, an application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the respondents before the learned Trial Judge. He points out that, the subject-matter of the disputes are commercial disputes within the meaning of the Commercial Courts Act, 2015. In support of his submission that the disputes involved are commercial disputes within the

meaning of the Act of 2015, he refers to the development agreement dated December 3, 2003. He relies upon **2026:CHC-JP:17-DB (Ratan Kumar Agarwal vs. M/s Asmi Construction & Ors.)** as also **2025:CHC-AS:2038-D (Ashok Saraf and Others vs. Asansol Durgapur Development Authority).**

11. Respondents are represented.
12. Parties before us entered into a development agreement dated December 3, 2003. Disputes and differences cropped up between the parties as to the non-execution of the development project in terms of such development agreement. The respondents alleged in their application under Section 9 of the Arbitration and Conciliation Act, 1996 that, it became aware that the appellants with *mala fide* intention or ulterior motive intend to enter into a development agreement with other local developer and try to create third-party interest in respect of the immovable property concerned. It is also the claim by the respondents that, the respondents issued a notice under Section 21 of the Act of 1996.
13. In view of the urgency, the respondents applied under Section 9 of the Act of 1996. Application under Section 9 of the Act of 1996 was registered as Misc. Case No.17 of 2022 (Arbitration) by the Additional District & Sessions Judge, Fast Track Court-5, Barasat, North 24-Parganas.
14. Disputes emanate out of the development agreement dated December 3, 2003. Development agreement conceives of developing an immovable property. Development agreement is commercial exploitation of an

immovable property. The subject-matter of the disputes is, therefore, a commercial dispute within the meaning of the Act of 2015. This view is supported by the decisions of **Ratan Kumar Agarwal** (supra) and **Ashok Saraf and Others** (supra).

15. Respondents approached the learned Additional District & Sessions Judge, Fast Track Court-5, Barasat, North 24 Parganas which passed the impugned orders in the first appeal. Review of the first order filed by the appellants was dismissed by the order impugned in the second appeal. Such Court is not the designated Commercial Court under the Act of 2015. Commercial Court for the subject jurisdiction was notified on February 11, 2021. The proceedings which resulted in the two impugned orders are of 2022 which are subsequent to the establishment of the Commercial Court at the relevant jurisdiction.
16. Since the proceedings, the two impugned orders were passed by a Court which did not possess requisite jurisdiction under the Act of 2015, we set aside both the impugned orders.
17. **FMAT (ARBAWARD) 1 of 2026** and **FMAT (ARBAWARD) 2 of 2026** along with connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.