

CO. 1225 of 2026

08.05.26
D/L
Sl-56
Ct. 06
(Samar)

**RM Construction & Ors.
Vs.
Prabir Kumar Ghorai & Anr.**

Mr. Salil Kumar Maiti,
Mr. Dyutiman Banerjee,
Ms. Dolan Samanta,
.... for the petitioners.
Ms. Ujjaini Chatterjee,
Mr. Sidharta Basu,
Ms. Garima Rajjada,
... for the Opposite Parties

1. This revisional application is directed against order No. 6 dated March 16, 2026 and order no. 8 dated March 24, 2026 passed by the learned Civil Judge, (Senior Division) at Haldia (in-charge) in Title Suit No. 160 of 2025.
2. Title Suit No. 160 of 2025 has been instituted by the opposite parties herein *inter alia* for a decree of declaration and permanent injunction. In the said suit, the petitioners have filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 asserting that as there is an arbitration agreement between the parties, therefore, the subject matter of dispute between the parties should be referred to arbitration. Such application still remains pending.
3. However, since the petitioner failed to file written

statement within the statutory period, therefore, the learned Trial Court has fixed the suit for hearing *ex parte*. Feeling aggrieved by such orders fixing the suit for hearing *ex parte* without first disposing of the petitioners' application under Section 8 of the 1996 Act, the petitioner has approached this court by filing the present revisional application.

4. Mr. Banerjee, learned advocate appearing for the petitioners submits that the learned Trial Court has committed a serious jurisdictional error in proceeding with the suit without first disposing of the application under Section 8 of the 1996 Act inasmuch as, the same touches upon the authority of the Court to proceed with the suit.
5. It is further submitted that since the suit is not commercial in nature, therefore, in case the petitioners are able to show good grounds for not being able to file their written statement, the learned Court would always have power to extend the time for filing written statement and take the same off the *ex parte* board.
6. He submits that the learned Trial Court has fixed the suit for peremptory hearing without affording any opportunity to the petitioners to explain why the petitioners could not file their written statement within the statutory period prescribed under the Code of the Civil Procedure, 1908.

7. Ms. Chatterjee, learned advocate appearing for the opposite parties submits that the petitioners have been remiss in filing their written statement. It is submitted that the petitioners had sought for time for filing written statement more than once but despite time being granted, they failed to file the same. She asserts that in such view of the matter, the learned Trial Court was perfectly justified in fixing the suit for hearing *ex parte*.
8. Heard learned advocates appearing for the respective parties and considered the material on record.
9. It is not in dispute that an application under Section 8 of the 1996 Act has been filed by the petitioners and the same is pending adjudication before the learned Trial Court since November 26, 2025.
10. If an application under Section 8 of the 1996 Act is filed before the Court, inviting the Court's attention to an arbitration clause that is alleged to govern the parties and the subject matter of the disputes that is to be adjudicated by the Court, the Court is required to take note of such application forthwith and deal with the same one way or other. If there is an arbitration clause, then in such case, the Court would be precluded from exercising its jurisdiction in respect of such dispute in terms of

the mandate of Section 8 of the 1996 Act. Such issue is therefore jurisdictional in nature and must receive prior attention than the other issues.

11. In such view of the matter, the learned Trial Court was not justified in postponing the hearing of the application under Section 8 of the 1996 Act.

12. This Court is informed that the next date for peremptory hearing of the suit has been fixed on October 03, 2026. In such view of the matter, the parties shall be at liberty to file an application before the learned Trial Court for putting up the Section 8 application out of turn so that same can be taken up and disposed prior to the next date fixed.

13. It is made clear that this Court has not gone into the merits of the application under Section 8 of the 1996 Act and it will be entirely open to the learned Trial Court to deal with the same in accordance with the law.

14. As regards the petitioners grievance of the suit being fixed for peremptory hearing at the *ex parte* board, it will be for the petitioner to apply before the Court and seek removal thereof from the *ex parte* board by taking appropriate steps and showing satisfactory causes in accordance with law. This Court expresses no opinion thereon and if such application is filed before the learned Trial

Court it will be open to the learned Trial Court to deal with the such application on its own merits in accordance with law.

15. The learned Trial Court is requested to ensure that the application under Section 8 of the 1996 Act is disposed of as expeditiously as possible and positively prior to the next date fixed in case the matter is brought to the notice of the learned Court.
16. With the above observations, CO. 1225 of 2026 stands disposed of. There shall be no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)