

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya**

**FMA 1738 of 2025
with
CAN 1 of 2025**

**SIDDHARTA CHANDRA
VS.**

SK. ABUL KASEM & ORS

For the appellant	:	Mr. Sukumar Bhattacharyya Ms. Oindrilla Chatterjee Ms. Puja Sonkar Ms. Subhangi Bhattacharyya
For the respondent	:	Mr. Anindya Halder Mr. Sk. Zubair Ahmed Mr. Rasidul Islam Molla
Heard on	:	13.01.2026
Judgment on	:	13.01.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of arguable questions of fact and law being involved, FMA 1738 of 2025 is admitted to be heard on the grounds taken in the memorandum of appeal.
2. It is argued by learned counsel for the appellant that the Civil Court which passed the impugned order under Section 9 of the Arbitration and Conciliation Act, 1996 did not have jurisdiction, since the dispute

between the parties, as per the averments made in the Section 9 application itself, comes within the ambit of “commercial dispute” as envisaged in the Commercial Courts Act, 2015.

- 3.** It is further contended that to the knowledge of the appellant, no steps have been taken by the petitioner/respondent no.1 for reference to arbitration despite the lapse of the statutory period of 90 days as envisaged in Section 9(2) of the 1996 Act, thereby rendering the order impugned before this Court academic.
- 4.** Learned counsel for the petitioner / respondent no.1, the main contesting party, disputes both such contentions and hands over a photocopy of a letter dated December 15, 2025 whereby, purportedly, a reference was made to arbitration. Thus, it is submitted that the matter does not come within the ambit of Section 9(2) of the 1996 Act.
- 5.** Insofar as the objection as to the dispute being commercial in nature, it is submitted that at no point of time did the present appellant raise such objection before the Section 9 Court. Thus, it is contended that the appellant is precluded from taking such point for the first time before this Court.
- 6.** A copy of the partnership agreement, on the basis of which the application under Section 9 of the 1996 Act has been filed, is handed over to this Court.

7. From a perusal thereof, it transpires that looking into the respective shares of the parties to the partnership agreement, which *inter alia* is the subject matter of the dispute, it is evident that the assessment of valuation of the dispute would be much above Rs.3 lakh, which is the specified value within the contemplation of Section 2 (1) (i) of the Commercial Courts Act, 2015.
8. That apart, since the premise of the dispute is a partnership agreement as contemplated in Section 2(1)(c)(xv) of the 2015 Act, there cannot be any manner of doubt that the dispute pertains to a 'commercial dispute' as contemplated in the 2015 Act.
9. Furthermore, from the schedule of property, in respect of which relief has been sought in the Section 9 application, it is evident that the same pertains to a cinema hall which is spread over at least six R. S. plots. Thus, by no stretch of imagination can it be said that the specified value of the dispute would be less than Rs.3 lakhs.
10. Thus, even without going into the question as to whether a reference to arbitration has been made or not, this Court finds that the learned District Judge who passed the impugned order did not have the jurisdiction to entertain the dispute, being a court of ordinary original civil jurisdiction and not a designated Commercial Court within the contemplation of the 2015 Act.

- 11.** Insofar as the objection of the petitioner / respondent no.1 to the effect that the issue as to the matter being a commercial dispute was not raised in the Section 9 Court, we are of the clear view that the bar of law inbuilt in the Commercial Courts Act, 2015 is an inherent subject-matter bar and as such, hits at the root of the matter, which cannot be waived by the parties. It is well-settled that jurisdiction cannot be conferred by consent. Since the bar is in the nature of a statutory one, the same cannot be waived and as such non-argument on the same before the Section 9 Court is irrelevant altogether to construe as to whether the bar is applicable.
- 12.** In view of the above discussions, there is no use in keeping the appeal pending further. Accordingly, FMA 1738 of 2025, along with CAN 1 of 2025, are disposed of by setting aside the impugned order, bearing Order No.17 dated August 27, 2025 passed by the learned District Judge at Hooghly in Miscellaneous Case No.31 of 2025 and holding that the application under Section 9, i.e., Miscellaneous Case no. 31 of 2025 is not maintainable before the said Court.
- 13.** Accordingly, the application under Section 9 itself, bearing Miscellaneous Case no. 31 of 2025, be deemed to stand dismissed on the ground of lack of jurisdiction.
- 14.** However, it is made abundantly clear that nothing in this order shall preclude the petitioner / respondent no.1 from presenting an application under Section 9 of the Arbitration and Conciliation Act,

1996 afresh on the self-same cause of action before the appropriate Commercial Court having jurisdiction.

15. If such an application is preferred, it will be open to the said Court to decide all issues on merits independently and in accordance with law, without being influenced in any manner by any of the observations made in this order or the order impugned before us.
16. We further clarify that for the purpose of Section 42 of the Arbitration and Conciliation Act, 1996, the Commercial Court having jurisdiction, where the application under Section 9 shall be presented, may be construed to be the first Court where an application in connection with the concerned arbitration agreement is filed, in view of the Court of the learned District Judge at Hooghly not being a Court competent within the contemplation of the 1996 Act.
17. There shall be no order as to costs.
18. Parties to act on the basis of server copy of this order, duly downloaded from the official website of this Court.
19. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)