

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/3/2023
With
AP/142/2006

IRCON INTERNATIONAL LIMITED
-Vs-
M/S. MEUMAL ATHWANI

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date : February 2, 2026.

Appearance:

Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Ms. Rimi Mandal, Adv.
...for the appellant

Dr. Madhusudan Saha Roy, Adv.
Mr. Debasish Sutradhar, Adv.
...for the respondent

The Court: Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against the judgment and order dated July 13, 2022 passed in AP/142/2006.

A contract was entered into between the parties for the construction of electric loco shed for homing 15 electric locos.

Disputes and differences arose between the parties with regard to such contract. An arbitration was held between the parties. Arbitration

resulted in an award which was assailed by the respondent before us in AP/142/2006.

The nature of the contract itself shows that, the disputes are commercial disputes within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015.

Challenge to the award under Section 34 of the Act of 1996 was pending in the High Court, under the non-commercial division, prior to the Act of 2015 coming into effect. With the Act of 2015 coming into effect, it was incumbent upon the Court to transfer the pending Section 34 application, to the commercial division, in view of Section 15 of the Act of 2015. Court apparently did not do so. None of the parties also applied for transfer which the parties could do.

The impugned judgment and order is dated July 13, 2022 and was passed by the Court under Section 34 of the Act of 1996 in the non-commercial division.

Act of the Court should not prejudice any of the parties.

In the facts and circumstances of the present case, since the impugned judgment and order was passed by a Court in the non-commercial division, while the subject matter before such Court involved commercial disputes within the meaning of Section 2(1)(c) of the Act of 2015, we are of the view that impugned judgment and order dated July 13, 2022 is without jurisdiction.

In such circumstances, the impugned order and judgment dated July 13, 2022 is set aside.

However, in order to ensure that none of the parties before us suffers any prejudice, by reason of the Court not transmitting AP/142/2006 to the commercial division, it would be appropriate to direct the department to treat AP/142/2006 to be transmitted to the commercial division of the High Court, on remand, by us. On such transmission, department will number the same in the Commercial Division and treat AP/142/2006 as disposed of in the non-commercial division.

On transmission, AP/142/2006, in the commercial division will be disposed of on merits by the Learned Judge as expeditiously as possible.

We clarify that we did not enter into the merits of the rival contentions of the parties. All points raised by the parties are kept open.

APO/3/2023 is disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)