

**04-12-2023**  
Item no.3 AC  
**Subrata**  
**Bhattacharyya**  
AR(C)

**IN THE HIGH COURT AT CALCUTTA**  
Civil Appellate Jurisdiction  
(Commercial Division)

**FMAT(ARBAWARD) No.48 of 2023**  
**Namita Bhattacharjee & Ors.**  
**-VS-**  
**Rajib Bhattacharya & Ors.**  
**with**  
**CAN No.1 of 2023**

Mr. Jayanta Kumar Mitra, sr. adv.  
Mr. Sakya Sen, adv.  
Mr. Arindam Paul, adv. ...for the appellants

Mr. Sayantan Bose, adv.  
Mr. S. Mukhopadhyay, adv. ...for respondent no.1

Mr. Abhrajit Mitra, sr. adv.  
Mr. Suddhasatva Banerjee, adv.  
Ms. Rituparna Chatterjee, adv.  
Mr. Shashwat Nayak, adv.  
Mr. K. Choudhury, adv. ...for respondent no.2

This is an appeal from an order dated 19<sup>th</sup> September 2023 passed by the learned Judge, Commercial Court at Rajarhat.

By the order, an application under section 9 of the Arbitration and Conciliation Act, 1996 filed by the appellants-petitioners was not considered by the learned court and relegated to the arbitral tribunal on the grounds that an arbitrator had already been appointed.

As the point involved is very short and we are not minded to delay the hearing of the merits of the matter, we propose to hear out the appeal along with the connected application and dispose of it today itself dispensing with all formalities.

On hearing Mr Jayanta Kumar Mitra, learned senior advocate appearing for the appellants-petitioners, Mr Sayantan Bose, learned advocate representing the respondent no.1, and Mr Abhrajit Mitra, learned senior advocate for the respondent no.2, we find that the appellants-petitioners are not parties to the subject arbitration agreement. Nonetheless the appellants have made an application before the learned arbitrator to be included as parties in the proceedings before him. The said application is contested by the respondents and is still pending before the learned arbitrator.

Therefore, the result is, at this point of time the appellants are unable to approach the learned arbitrator for any relief under section 17 of the said Act.

In such a situation, the learned court below ought not to have relinquished jurisdiction.

We accordingly, direct the learned court below to reconsider the section 9 application filed by the appellants-petitioners as early as possible and dispose of it, upon hearing the parties, by a reasoned order, within two months from communication of this order, after exchange of affidavits by the parties.

For this purpose, Mr Jayanta Kumar Mitra's clients will make a short application before the learned judge when suitable directions shall be passed by the court for exchange of affidavits so that the application can be heard out within the stipulated time.

All points are kept open before the learned court below, including the locus standi of the appellants to file the section 9 application at this point of time.

In the interest of justice we request the learned arbitrator to dispose of the said application before him either way, by 15<sup>th</sup> January 2024.

The interim order dated 19<sup>th</sup> September 2023 is set aside.

The appeal and the connected application are, thus, disposed of.

**[I.P. Mukerji, J]**

**[Biswaroop Chowdhury, J]**