

OCD-3

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/654/2024

BHATTACHARYA RUBBER WORKS PRIVATE LIMITED
VS
WEST BENGAL STATE WAREHOUSING CORPORATION

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 14th November, 2024.

Appearance:

Mr. Arijit Bardhan, Adv.

Mr. Sarosij Dasgupta, Adv.

Ms. Saheli Bose, Adv.

...for the petitioner

Mr. Jayanta Sengupta, Adv.

Mr. Pourush Bandhopadhyay, Adv.

Mr. Samrat Mukherji, Adv.

Ms. Dakshayani Basu, Adv.

Mr. Rik Mukherji, Adv.

...for the respondent

The Court :- The respondent has raised the point of jurisdiction of this Court to entertain an application under Section 9 of the Arbitration and Conciliation Act, 1996. Various interim reliefs have been prayed for. First of such relief being an injunction restraining the respondent from creating any third party interest over the subject matter of the award. The other prayers are for appointment of a Receiver and direction upon the respondents to pay occupational charges at the rate at which the respondent had been letting out a portion of the godown, i.e., Rs.21/- per square feet.

Mr. Jayanta Sengupta, learned Advocate for the respondents raise the question of jurisdiction of this Court to entertain the application on the ground that the application under Section 34 of the said Act has been transferred to the Commercial Court at Rajarhat, at the instance of the petitioner. According to Mr. Sengupta, Section 2(1)(e) of the Act defines the Court within whose jurisdiction such application should be filed. It is urged that the award-holder accepted the jurisdiction of the Commercial Court at Rajarhat to be the Court before which all proceedings arising out of the application under Section 34 of the said Act should be heard and disposed of. This is the third application under Section 9 of the said Act. The same should not be entertained by this Court and the petitioner's remedy would be before the Commercial Court at Rajarhat. Relying on the application filed under Section 151 of the Code of Civil Procedure by which the proceedings before the Barasat Court was sought to be transferred to the Commercial Court at Rajarhat by the petitioner, Mr. Sengupta submits that the petitioner could not retract from the admissions in the application.

Mr. Sengupta submits that a Division Bench had entertained an application for injunction on an earlier occasion, but had not decided the question of jurisdiction and had left it to the Court before which the question was pending, to decide the same expeditiously.

According to Mr. Sengupta, the High Court is not the principal Civil Court. The subject matter (land) of the dispute is situated at Dumdum and the award was passed for recovery of the said land.

Mr. Bardhan, learned Advocate for the petitioner objects to such submissions and vehemently objects to the submissions of Mr. Sengupta. He

refers to Section 42 of the said Act. Mr. Bardhan submits that once two applications under Section 9 of the said Act had been entertained by the High Court one prior to the filing of the Section 34 application and one thereafter, the provisions of Section 42 would be squarely applicable.

I find that the Division Bench, while disposing of an appeal arising out of the second application for injunction, had left the question of jurisdiction open to be decided by the appropriate Court. It is informed that the application under Section 42 of the said Act, filed by the petitioner on the ground that only the High Court at Calcutta would have the jurisdiction to entertain the application under Section 34 of the said Act, is yet to be decided by the commercial court of Rajarhat.

Under such circumstances, this Court directs the concerned Court, that is, the Commercial Court at Rajarhat to decide the application under Section 42 of the said Act expeditiously and dispose of the said application within 15th December, 2024.

It appears that several orders have already been passed for expeditious disposal of the said application. Unless the said application is disposed of, it would not be possible for the Court to decide this application.

Under such circumstances, this Court requests the learned Judge to do the needful.

Let this matter appear on 19th December, 2024.

(SHAMPA SARKAR, J.)