

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).6443 OF 2017
(Arising out of SLP(C)No. 611/2011)

SOUTH CITY PROJECTS KOLKATA APPELLANT (S)

VERSUS

JUGAL KISHORE SADANI & ORS. RESPONDENT (S)

WITH

CIVIL APPEAL NO(S).6444 OF 2017
(Arising out of SLP(C)No. 18197/2011)

JUGAL KISHORE SADANI & ORS. APPELLANT (S)

VERSUS

SOUTH CITY PROJECTS KOLKATA RESPONDENT (S)

O R D E R

1. Heard learned counsel for the parties and perused the relevant material.

2. The plaintiffs-Jugal Kishore Sadani and others have filed a Suit No.10 of 2009 for specific performance of Lease Agreement/Memorandum Recording Terms Of Allotment (for short, 'MOA') dated 13.07.2007 against the defendants-South City Projects, Kolkata before the Learned 5th Civil Judge, Alipore.

3. In the said suit against South City Projects Kolkata, the other party to the MOA, no application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') was moved. However, pending the suit, the defendant-South City Projects Kolkata terminated the MOA dated 13.07.2006. Thus, providing itself with a cause of action. On the basis of this cause of action, the South City Projects Kolkata moved an application i.e. A.P. No.230 of 2010 under Section 11 of the Act in the Calcutta High Court before the nominee of the learned Chief Justice.

4. By the impugned order dated 15.09.2010, the nominee of the learned Chief Justice has held that the suit should be decided first and then arbitration should commence between the parties.

Aggrieved by this Order, both the parties have come up to this Court.

5. We are satisfied that the nominee of the learned Chief Justice ought not to have directed that the suit should be decided before the arbitration proceedings while deciding the application under Section 11 of the Act. Section

10 of the Civil Procedure Code has no application to such circumstances. Moreover, it is doubtful if while deciding the application under Section 11 of the Act, there was a power to stagger the arbitration to a stage, after the suit is decided. It is, however, not necessary to go into the question in view of the order which we propose to pass:

6. The plaintiff-Jugal Kishore Sadani is granted liberty to amend its plaint in Suit No.10 of 2009 for incorporating a challenge to the termination of the MOA dated 13.07.2007. The defendant-South City Projects Kolkata shall have liberty to amend its written statement(s) and also prefer a counter claim, as may be advised. The plaintiff-Jugal Kishore Sadani shall have liberty to file reply to the counter claim. The Trial Court shall strike additional issues as may be necessary.

7. The Trial Court is directed to decide the suit as expeditiously as possible in any case not later from one year from the next date before itself.

8. The order permitting Arbitration is set aside and the appeals are disposed of in the above terms.

.....,J.
(S.A. BOBDE)

.....,J.
(L. NAGESWARA RAO)

NEW DELHI
MAY 05, 2017

ITEM NO.34

COURT NO.9

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 611/2011

(Arising out of impugned final judgment and order dated 15/09/2010 in APO No. 230/2010 passed by the High Court of Calcutta)

SOUTH CITY PROJECTS KOLKATA

Petitioner(s)

VERSUS

JUGAL KISHORE SADANI & ORS.

Respondent(s)

(with appln. (s) for permission to file additional documents)

WITH

SLP(C) No. 18197/2011

(With appln. for directions and Office Report)

Date : 05/05/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Parties

Mr. Ramesh Singh, Adv.
Ms. Anne Mathew, Adv.
Mr. Suman Jyoti Khaitan, Adv.

Mr. C. Mukund, Adv.
Mr. Ashok Jain, Adv.
Mr. Pankaj Jain, Adv.
Mr. Amit Kasera, Adv.
Ms. Priyanka Dass, Adv.
Mr. Bijoy Kumar Jain, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

In view of the above, all pending application(s) shall stand disposed of.

(Neetu Khajuria)

(Indu Pokhriyal)

Court Master

Court Master

(Signed order is placed on the file.)