

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction

FMAT(ARBAWRD) 3 of 2026
IA No: CAN 1 of 2026

Bijay Saha @ Bijoy Saha
Vs
Ajit Saha and Ors

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur
And
The Hon'ble Justice Supratim Bhattacharya

For the appellant :Mr. Sudipto Kumar Majumdar,
Senior Advocate
Mr. Mayank Bhandari, Advocate

For the respondent nos. 1 and 3 :Dr. Arjun Chowdhury, Advocate
Mr. Satyam Lama, Advocate
Ms. Riya Agarwal, Advocate

For the respondent no.2 :Mr. Satyajit Paul, Advocate
Mr. Rounak Ghosh, Advocate

Heard On : 09.09.2026

Judgment On : 11.09.2026

Ravi Krishan Kapur, J.:

1. This appeal is against an order dated 2 July, 2026 passed by the Learned District Judge, Darjeeling in Misc. Arbitration Case No. 10 of 2026.
2. Briefly, the parties (save and except the respondent no. 4) are family members. The present disputes and differences pertain to the management, control and affair of companies which are owned, controlled and managed by

the family. Upon the death of their father, the parties referred their dispute and differences to arbitration where an arbitral award came to be passed on 9 September 2014.

3. In or about 2022, the award was put to execution. In view of alleged omissions and corrections, the appellant had filed an application under section 11 of the Arbitration and Conciliation Act, 1996. By an order dated 1 July, 2025 the application was dismissed granting liberty to the petitioner to file an appropriate application in accordance with law. In such circumstances, the appellant had filed an application under section 33 of the Act before the Sole Arbitrator inter alia, seeking correction and interpretation of the award.
4. It is an admitted position that the application under section 33 of the Act is pending final disposal before the Sole Arbitrator. In this background, the respondents had filed an application under sections 14 and 15 of the Act before the Learned District Judge seeking termination of the mandate of the Arbitrator. Subsequently, the respondents had also filed an application under section 9 of the Act for interim reliefs.
5. By the impugned order, the Learned District Judge has restrained the Sole Arbitrator from proceeding any further with the hearing of the application under section 33 of the Act until disposal of the application under section 14 read with section 15 of the Act. It has been held that as an interim measure under section 9 of the Act an order restraining the Sole Arbitrator from proceeding with the arbitral proceedings could always be passed.
6. It is contended on behalf of the appellant that the impugned order is grossly perverse and contrary to the mandate of in the Act. There was no application

filed before the Arbitrator challenging his jurisdiction. There was also no application filed under section 17 of the Act before the Sole Arbitrator for interim reliefs. In such circumstances, the discretion exercised by the Learned District Judge in passing the impugned order is contrary to the provisions of the Act.

7. On behalf of the respondents, it is submitted that there are serious grounds of bias against the Sole Arbitrator. The Arbitrator had become *de jure* unable to perform his functions. In any event, the application under section 33 of the Act was not maintainable and was liable to be set aside both on the grounds of limitation and on merits.
8. It is an admitted fact that the application under section 33 of the Act is still pending final disposal before the Sole Arbitrator. There has been no challenge to the authority of the Arbitrator which has been filed before the Arbitrator. None of the interim measures which are contemplated under section 9 have even been considered before passing of impugned order. The question of the Arbitrator acting within his jurisdiction or in excess thereof has also not been adjudicated upon in the impugned order. All these questions are yet to be finally adjudicated upon. In this background, the impugned order is unsustainable and against the mandate of the Act. The instances of judicial intervention are limited and circumscribed under the Act. The repeated pronouncements by all Courts that when matters are pending before the Arbitrator, the Courts should not unnecessarily interfere with the arbitral process has been disregarded.
9. Judicial intervention during arbitration is limited to extremely urgent cases. The main concern of the Court remains to avoid overreaching the authority

of the Arbitral Tribunal Section 9 has provided for a number of interim measures. However, there are strict boundaries which are to be maintained by Courts before interdicting the arbitral process. In *N.N. Global Mercantile Pvt. Ltd. v. M/S Indo Unique Flame Ltd.* 2023 INSC 1066, the Hon'ble Supreme Court reiterated the *kompetenz kompetenz* principle, emphasizing that Arbitral Tribunals should be the first to redress jurisdictional issues. In such circumstances, the impugned order is unsustainable and is set aside. The nature of the interim relief which has been granted in the instant case would emasculate the object of the Act and undermine the role of the Arbitrator.

10. In such circumstances, the impugned order is unsustainable and is set aside. The Sole Arbitrator is directed to proceed with the pending application under section 33 of the Act. It is made clear that there has been no expression on the merits of the application pending before the Sole Arbitrator.
11. To this above extent, FMAT 3 of 2026 is allowed. The connected stay application CAN 1 of 2026 also stands disposed of.

(Ravi Krishan Kapur, J.)

I agree,

(Supratim Bhattacharya, J.)