

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Ajay Kumar Gupta

FMAT (ARBAWARD) 56 of 2025

with

IA No.: CAN 1 of 2025

with

IA No.: CAN 2 of 2025

GTL Infrastructure Limited ("GIL")

Vs.

Sambhu Naskar & Anr.

For the Appellant : Mr. Mohit Gupta, Advocate
Mr. Arijit Chatterjee, Advocate
Mrs. Pronita Paramanya Naskar, Advocate
Ms. Suparna Das, Advocate

For the Respondents : Mr. Satyendra Agarwal, Ld. Sr. Advocate
Ms. Shikha P. Chowdhury, Advocate

Hearing & Judgment on : **July 30, 2026**

DEBANGSU BASAK, J.:-

1. Affidavits filed in Court be taken on record.
2. IA No.: CAN 2 of 2025 is an application for condonation of delay.
3. Appeal is under Section 37 of the Arbitration & Conciliation Act, 1996.
4. Appeal is directed against the order dated August 12, 2025 passed under Section 34 of the Act of 1996 in Misc. Case (Arb.) No.107 of 2022.
5. Delay is sought to be explained on the basis of the Legal Officer of the appellant suffering an accident and the ensuing medical condition of such person preventing the appellant from filing the appeal within time.

6. Causes shown in the application for condonation of delay are accepted as sufficient.
7. Delay of 16 days in preferring the appeal is condoned.
8. IA No.: CAN 2 of 2025 is allowed.
9. IA No.: CAN 1 of 2025 is an application seeking stay of the impugned judgment and order.
10. By consent of the parties, the appeal is taken up for hearing.
11. As noted above, the appeal is directed against an order dated August 12, 2025 passed in Misc. Case (Arb.) No.107 of 2022 by the learned Additional District Judge, Fast Track 2nd Court, South 24 Parganas, Alipore.
12. Learned Advocate appearing for the appellant submits that an agreement for installation of a mobile phone tower was entered into between the appellant and the respondents on November 2, 2008. Prior to the expiry of the time specified under such agreement, the appellant wanted to upgrade the technology. Respondents prevented the appellant from entering into the premises and obtaining access to the mobile phone tower.
13. Learned Advocate appearing for the appellant submits that, the agreement dated November 2, 2008 contains an arbitration clause. He refers to Clause 15 of the agreement dated November 2, 2008. He submits that, the parties did not agree to any Arbitrator in Clause 15 of the agreement.
14. Learned Advocate appearing for the appellant submits that, no notice under Section 21 of the Act of 1996 was issued by the respondents. A person claiming himself to be an Arbitrator issued a notice to the

appellant. Appellant appeared before such person. Appellant filed an application under Section 16 of the Act of 1996 before such person. The application was rejected by such person by the order dated February 22, 2022. He submits that, thereafter, such person purported to publish an award dated July 29, 2022. Such award was assailed under Section 34 of the Act of 1996 where, the impugned order was passed.

15. Learned Advocate appearing for the appellant submits that, the learned Trial Judge did not consider the issue of appointment of the Arbitrator at all. He refers to the impugned order in this context.
16. Learned Advocate appearing for the respondents submits that, the only issue raised by the appellant both before the learned Arbitrator as also before the learned Trial Judge was the seat and venue of arbitration. He submits that, Clause 15 of the agreement dated November 2, 2008 provides that the arbitration proceedings will be held at Pune. He points out that, the arbitration proceedings were held at Kolkata. Arbitration was held in Kolkata since the appellant did not pay the fees of the learned Arbitrator as also pay for the conveyance of the Arbitrator.
17. We find from the records that, the parties entered into a lease deed dated November 2, 2008. Clause 15 of such lease deed is as follows:

“15. Any dispute or claim between the parties hereto arising out of or relating to this agreement, or its implementations and/or its effect, or the breach, termination, due to efflux of time or otherwise, or invalidity thereof, either during its subsistence or after

its termination, shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of Arbitrations and Reconciliation Act 1996. The Arbitration shall be held at Pune.”

18. Clause 15 of the lease deed dated November 2, 2008 does not name any person as an Arbitrator.
19. Records do not demonstrate that, any of the parties before us issued a notice under Section 21 of the Act of 1996 to refer the disputes between them to arbitration.
20. The Arbitrator assumed jurisdiction without being so appointed by a Court under Section 11 of the Act of 1996 or being agreed to by the parties in writing. No material is placed before us to suggest otherwise.
21. Before the learned Arbitrator, appellant filed an application under Section 16 of the Act of 1996 assailing the jurisdiction of the learned Arbitrator. Such application was disposed of by an order dated February 22, 2022 where without assigning any reasons, the learned Arbitrator proceeded to reject the application under Section 16 of the Act of 1996 filed by the appellant.
22. The rejection order dated February 22, 2022 is a nullity since it contains no reasons at all.
23. The award was made and published on July 29, 2022. It was assailed within time under Section 34 of the Act of 1996 by the appellant.

24. Issue with regard to the appointment of the Arbitrator and lack of his jurisdiction was taken in Section 34 of the Act of 1996. It was dealt with by the learned Judge by holding that the only ground canvassed was with regard to the seat of arbitration.
25. With respect, learned Judge passing the impugned order failed to exercise jurisdiction vested upon it under Section 34 of the Act of 1996.
26. The Arbitrator who passed the impugned order was not vested with jurisdiction to do so. The Arbitrator was not appointed under Section 11 of the Act of 1996. Parties did not in writing agreed to his appointment.
27. In such circumstances, the Award dated July 29, 2022 passed by the Arbitrator is a nullity.
28. Impugned order dated August 12, 2025 is set aside.
29. Consequently, Award dated July 29, 2022 is also set aside.
30. Parties are at liberty to take recourse to the remedies available in law in accordance with Clause 15 of the lease deed dated November 2, 2008.
31. **FMAT (ARBAWARD) 56 of 2025** and **IA No.: CAN 1 of 2025** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

32. I agree.

(Ajay Kumar Gupta, J.)