**Supreme Court appoints Justice Asok Kumar Ganguly as arbitrator in dispute of Haldibari Tea Manufacturers with partner**

The Counsel on behalf of the respondent Mr. Vishwanathan KV has made his submission that respondent wanted any High Court judge having station of Calcutta to be appointed as an Arbitrator and petitioners are suggesting the names of retired judges of Supreme Court having station in Delhi.

The [**Supreme Court**](https://www.indialegallive.com/constitutional-law-news/supreme-court-news/) on Friday gave its consent for the name of (Retd) Justice Asok Kumar Ganguly to be appointed as an arbitrator on the suggestion made by the Counsel of petitioner Haldibari Tea Manufacturers LLP in an alleged dispute with one of its partner, Kajal Sarkar.

The three-Judge Bench of Justice L. Nageswara Rao, Justice B.R. Gavai and Justice B.V. Nagarathna heard both the parties, who gave the names of various Judges in form of suggestion to appoint as Arbitrator, in order to settle their dispute.

Advocate Diksha Mishra, Counsel for the petitioner, submitted that they have already taken permission from this court in previous hearing to propose the names of the arbitrator.

The Counsel, on behalf of respondent Vishwanathan KV, made submission that respondent wanted any High Court judge having station of Calcutta to be appointed as an Arbitrator and petitioners are suggesting the names of retired judges of Supreme Court having station in Delhi.

Diksha countered that there is no seat of arbitration that has been fixed as per the agreement. The petitioner has proposed the names of retired Justice Rohinton F. Nariman, Justice Indu Malhotra, Justice AK Patnaik and made a request that anyone can deal with the matter, as this case is of the single arbitrator.

However, the respondent suggested the names of Justice Bhaskar Bhattacharya, Justice Tapan Sen, Justice Pranab Chattopadhyay and Justice Samapti Chatterjee, and requested the Court to select any name from this list.

Advocate Diksha Mishra have contended that petitioners need an independent arbitrator who is not from the state and not from the suggestions given by the respondents. She has submitted further that petitioners have apprehension that respondents are having some local influence.

## ****How can you make allegation on a High court Judge being influenced: Supreme Court****

Justice B.R. Gavai slammed the Counsel of petitioner on her contention and said, “How can you make allegation over a High Court Judge being influenced? This statement is contemptuous in nature. Your statement is suggesting that all the retired High Court judges are under influence.”

She then suggested the name of Justice A K Ganguly, on which the respondent also gave his consent.

The Court then asked Diksha to take instructions from petitioners over the name of Justice A K Ganguly and ordered to list this matter on Monday.

**Background**

The present Petition has been filed by petitioner/Haldibari Tea Manufacturers LLP  being aggrieved by the order of the Calcutta High Court, whereby the Court had set aside an order dated December 14, 2020, passed by the District Judge, Darjeeling under Section 9 of the Arbitration and Conciliation Act, 1996. The Respondent/ Kajal Sarkar had challenged the District Court’s Order under Section 37 of the Act before the High Court.

The petitioner herein had filed an application under Section 9 of the Act in the District Court, seeking interim orders of injunction restraining the Respondent from disturbing the petitioners and its agents in the smooth conduct of the day to day functioning and managing of the LLP business, entering the premises of ‘Tea Garden’ estate managed by the LLP, its land, factory and building, representing the LLP as a partner in any manner, creating third party interest and/or causing encumbrance to assets, properties and business of the LLP, till the disposal of the arbitration proceedings. Ad-interim orders for these reliefs were sought.

The district judge, on July 24, 2020, by an ex-parte Ad-interim order of injunction had restrained the Respondent from entering Tea Garden estate for three weeks. When the orders passed on July 24, 2020 and December 14, 2020 were made absolute, the petitioner was given liberty to approach the police for assistance in operating the Tea Garden Estate till the resolution of the arbitration proceedings. The Arbitrator was at liberty to continue or discontinue these Orders as per arbitration Clause 28. The Respondent was directed to make an application before the High Court for appointment of an Arbitrator before 28.02.2021, and the order was enforceable till the end of March, 2021.

## ****Facts of the Case****

The facts of the case are that Haldibari Tea Manufacturers is an LLP firm and the matter in arbitration is regarding the exclusion of the Respondent, Kajal Sarkar, as a partner from the LLP business. Allegedly, as per an agreement on May 15, 2020, the Respondent was assigned full rights to run the tea business of the LLP. Further, as per a Deed of Reconstitution (“the Deed”) of the LLP, dated 31.01.2020, 20% share of the LLP was conferred the Respondent. However, according to the Petitioner, the Agreement dated May 15, 2020 was manufactured. The Section 9 application was verified on 21.07.2020 and the expulsion letter whereby the Respondent was expelled from the LLP was dated 22.07.2020.

The Counsel for the Respondent argued – that the District Judge had, in effect, decided the dispute and granted relief, defeating the purpose of arbitration, that the contention of the Agreement being manufactured was without basis, that the subsequent conduct of all the partners, in admitting the appellant as a designated partner in all documents filed on behalf of the LLP, was ignored by the District Judge and that the Deed of Reconstitution validly conferred 20% share on the Respondent even if there was a misnomer in the use of gender and chronology of parties referred to in the Deed. The Counsel for the Petitioner contended that the – Order was well-reasoned, giving due consideration to all the materials placed on record, particularly the documents proving that the Petitioner had full rights to run the LLP and not the Respondent and that the relief granted fell within the scope of the jurisdiction under Section 9 of the Act.

## ****High Court Observation****

The Court observed that the issues to be resolved in arbitration were pre-judged on merits by the District Court and the reliefs granted were beyond the scope of jurisdiction under Section 9. Moreover, the Order granting police assistance for implementing an Order, simultaneously with the Order itself, without recording any allegation that the same was flouted by the Respondent, was considered to be unconscionable. On merits, the Court held that the basis on which the Agreement was held to be manufactured was flimsy, particularly as a forensic report matching the signature of the specimens to the signatures on the Agreement document was discarded, among other reasons based on mere conjecture. Further, the observations in the Order on the Deed were held to be erroneous, as a harmonious reading of the Deed would reveal that Kajal Sarkar had a 20% share in the LLP despite the discrepancies between the preamble and chronology of parties in the Deed. The High court also found fault with the Section 9 application, as it was verified on 21.07.2020 but the cause of action from which the suit arose, i.e., the expulsion letter, was dated 22.07.2020, one day after the application was verified. The Petitioner’s defence, that the cause of action was the ‘decision to expel’ taken on 20.07.2020, was rejected by the Court.

 **High Court Order**

The High Court had concluded that there were sufficient grounds to doubt the maintainability of the Section 9 application and the impugned order was patently perverse and suffered from errors of law and fact. Thus, the challenge was allowed, the District Judge’s order was set aside and a connected application (CAN 1 of 2021) was disposed off consequentially by the same judgement.

Case Name- Haldibari Tea Manufacturers LLP V. Kajal Sarkar