

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CARAP No. 4 of 2026 in CARBA No.
9 of 2025**

Date of decision: 12.08.2026

South East Asian Study Foundation Trust & Anr.

...Appellants

Versus

Vocational Education Foundation Trust & Ors.

...Respondents

Coram

The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.

The Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting?

For the Appellant(s): Mr. Shivank Singh Panta, Advocate,
for the non-applicants/appellants.

For the Respondent(s): Mr. Debesh Panda, Mr. Ishaan
Kashyap, Advocates (in person) & Mr.
Abhinav Singh, Advocate (through
V.C.), for respondents No. 1 and
2/applicants.

Mr. Surender Kumar Sharma, Senior
Advocate with Mr. Sidhant Negi,
Advocate, for respondent No. 3.

G. S. Sandhawalia, Chief Justice (Oral)

The present application has been filed by respondents No. 1 and 2 seeking directions in terms of the principles underlying Section 144 of the CPC and the following prayers have been made in the application:-

"A. Direct appellants to handover control of respondent No. 3-University, and disgorge and make restitution of all benefits gained since March 22, 2025 in terms of the

interim measures grated by this Hon'ble Court which would include making over all monies received in any bank account other than the official bank account of Respondent No. 3 University; and

B. Restrain the appellant No. 2 from continuing to operate as Chief Executive Officer of Respondent No. 3 University; and

C. Restrain the Appellant No. 1 from interfering in any manner in the affairs of the Respondent No. 3 University; and

D. Direct the Appellants to make over the costs of Rs. 5,00,000/- which the learned Single Judge had directed them to pay the respondents, as per law; and

E. Pass any such other order(s) as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the present case and in the interest of justice."

2. The application has been opposed by the appellants by filing reply, principally, on the ground of maintainability of the present application before the Appellate Court. It is specifically contended that this Court had dismissed the appeal on 30.10.2025 and in view of the language of Section 144 CPC, the application would lie before the Court of first instance and not before the Appellate Court. A specific defence in paragraph-5 of the preliminary/legal objection to that extent has been taken.

3. In such circumstances, we are inclined as such to relegate the present applicants to the learned Single Judge, whose order dated 23.07.2025 we had upheld, when the application under Section 9 of the Arbitration and Conciliation Act (for short the 'Act') had been dismissed with costs of Rs.5,00,000/-.

4. Provisions of Section 144 of the CPC read as under:-

“(1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation. —For the purposes of sub-section (1), the expression Court which passed the [decree](#) or order shall be deemed to include, —

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance.

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order.

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

5. Learned counsel for the applicants is at pains to point out that after the decision on 23.07.2025, the **Arbitration Case No. 347 of 2025** had been listed before one of us (Justice G. S. Sandhawalia, CJ) for appointment of an Arbitrator and the said petition had been withdrawn while noting that the jurisdiction of this Court for initiating the proceedings under Section 9 of the Act has been held to be not available in appeal which we had decided on 31.10.2025 and the Courts at Delhi would have jurisdiction. The said order reads as under:-

"OMP No. 1420 of 2025

The present application has been filed for withdrawal of the petition with liberty to agitate the claim petition in accordance with law.

2. The main case has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, for seeking appointment of an Arbitrator. The ground as such for withdrawal mentioned in the application is that the CARBA No. 9 of 2025 had been dismissed on 31.10.2025 and it is submitted that the jurisdiction of this Court for initiating a proceeding under Section 9 of the Arbitration and Conciliation Act has been held not to be available with this Court as the parties had agreed to the terms of the agreement made inter se, including the memo of understanding, that the Courts at Delhi would have jurisdiction.

3. In such circumstances, counsel for the petitioner does not wish to press the present petition. Accordingly, the application is allowed and the petition is dismissed as withdrawn, with liberty as aforesaid, alongwith pending applications, if any."

6. It is submitted that after the filing of the present application for restitution, notice under Section 21 of the Act had also been served upon the applicants for initiating arbitration proceedings and in pursuance of the same, the petition under Section 11(6) of the Act had been filed before the Delhi High Court for appointment of an arbitrator. The order issuing notice dated 19.03.2026 in **Arbitration Pet.**

No. 457 of 2026 filed by the appellants is also on the record as Annexure R-8.

7. Learned counsel for the applicants has also brought to our notice that the objection as such that the Appellate Court would have no jurisdiction has been taken, but the appellants are also blowing hot and cold inasmuch as in para-9 of the same preliminary submissions, in which it has also been mentioned that vide order dated 31.10.2025, it has been held that jurisdiction would lie at Delhi, therefore, the restitution application under Section 144 of the CPC cannot be permitted to be invoked before the Courts at Shimla.

8. It is in such circumstances, the learned counsel for the applicants, apprehends that if such an objection is again taken before the learned Single Judge, it would amount to playing game with the Court and also with the applicants, which the party cannot be permitted to do so. He has placed heavy reliance upon the principles of restitution and placing the parties in the same position as they were before they approached any Court and if they have secured any order which has benefited them.

9. Reliance is placed upon the judgment in ***Kalabharati Advertising v. Hemant Vimalnath Narichania, 2010 (9) SC 437***, to contend that any

undeserved and unfair advantage given must be neutralised as the institution of litigation cannot be permitted to confer any advantage on the party by the delayed action of the Court on the maxim "*Actus Curiae neminem gravabit*" and that the act of the Court shall prejudice no one. It is, thus, apparent that having obtained an *exparte* interim order dated 22.03.2025 from the learned Single Judge and eventually leading to the dismissal of the petition under Section 9 of the Act on 23.07.2025 and having voluntarily invoked the jurisdiction of this Court on the basis of the agreement in question, it would not lie in the mouth of the appellants now to take a contrary stand.

10. Keeping in view the above controversy and the undisputed facts, it is evident that this Court had been approached at the first instance and interim order had been passed and the learned Single Judge came to the categorical conclusion that the arbitration proceedings had never been commenced before approaching this Court and it had been held out that an application had been preferred under Section 11 of the Act and the learned Single Judge had dismissed the petition while imposing the costs of Rs.5,00,000/- for misleading the Court.

11. In our order dated 31.10.2025 also, we had come to the conclusion that the appellants had withheld more than they had disclosed in the petition filed under Section 9 of the Act and also noticed that the bank had not been impleaded and directions had been got issued without impleading the bank as a party, without calling for its response. In such circumstances, we had come to the conclusion that the appellants after having obtained the stay order, has chosen not to commence the arbitration proceedings, which is mandatory under Section 9 of the Act and the issue as such of jurisdiction also arises keeping in view the fact that the agreement itself provides that the Delhi Courts would have territorial jurisdiction.

12. In such circumstances, we are of the considered opinion that the observations of the Apex Court in ***South Eastern Coalfields Ltd. vs. State of M.P. & Ors., (2003) 8 SCC 648***, would come into play, wherein it has been held that it is the duty of the Court that the restitution would meet the end of justice rather than defeat the same and if an effort is made to restore the parties to the same position, in which they would have been, had the interim order not been passed, it would not be wrong in any manner since the undoing of the

effect of an interim order is the basic principle of the restitution.

13. In such circumstances, we are of the considered opinion that it is not open to the appellants as such to take an alternate plea as such that the Courts at Delhi would have jurisdiction to order restitution once the appellants having approached this Court and thus having taken their chance, cannot be given an opportunity to wriggle out and take refuge that now the present applicants would only be having a right of restitution before the Courts at Delhi since they at the belated stage have now preferred an application under Section 11(6) of the Act.

14. In such circumstances, we are of the considered opinion that the matter can be relegated to the learned Single Judge for decision on the issue of restitution since the interim order dated 22.03.2025 was passed by the learned Single Judge, wherein the applicants had been directed not to disrupt the functioning of the University. Further directions had also been issued that they would not interrupt the functioning and management of petitioner No. 2 as Chief Executive Officer, apart from the fact that the petitioners before him had also given liberty to approach Kotak Mahindra Bank for liquidation of the entire outstanding liability of the bank without prejudice

to the rights of respondents No. 1 and 2. In our order, we had also noticed that the present applicants as such had already settled the financial issues with the bank and payments had been confirmed on 18.03.2025 before the interim order was passed on 22.03.2025.

15. Accordingly, we give liberty to the present applicants to file the application before the learned Single Judge. Since the issue has been pending for long, it is open to the applicants to file an application alongwith the reply of the appellants, as the pleadings are already completed, which would ensure that there is no delay as such caused on account of the completion of the pleadings before the learned Single Judge. Needless to say the parties can file supplementary affidavits, if required.

16. The present application is disposed of in the aforesaid terms.

(G. S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

12th August, 2026
(sanjeev)