

199 **03.02.**
2023
Ct. No. 04

Ab

FMAT (ARBAWARD) 60 of 2022
With
IA No. CAN 1 of 2022

M/s. Shree Shew Infrastructures
Vs.
Devarshi Realcon Private Limited.

Mr. Chiranjib Sinha,
Mr. Dyutiman Banerjee.
... for the appellant.

Mr. Sanjib Kumar Mal,
Mr. Saptarshi Kumar Mal.
... for the respondent.

Re: CAN 1 of 2022

It is really astonishing that an order of injunction is passed by the Court under Section 9 of the Arbitration and Conciliation Act, 1996 restraining the appellant from raising any demand or giving effect to a letter of demand.

A contract was entered into for construction of G+5 storied residential building at premises no. 26/1/1, B.T. Road, Kolkata 700002. The dispute arose between the contracting parties and in view of the existence of an arbitration agreement, the same is required to be adjudicated.

In course of the dealing, the respondent raised a demand on account of damages being suffered because of the abandonment of the work of construction. On the other hand, by virtue of a letter dated 27th October 2020 the appellant made a counter demand and indicated therein that the demand in respect of the supplementary and other bill totaling Rs. 36,46,405/- have not been paid. It is further indicated in the said letter that the TDS to the tune of Rs. 71,129/- is unpaid to the department. It really impedes the appellant to

submit the final return to the concerned Income Tax Department.

It was simplicitor a letter demanding the money allegedly due on account of the work allegedly done by the appellant, which cannot be construed to have any cascading effect on the counter claim of the respondent. It is a simplicitor letter calling upon the respondent to make payment and if the respondent has disputed the amount so claimed, the same can be adjudicated by an Arbitrator, but by no stretch of imagination the same can be the subject matter of the application under Section 9 of the said Act inviting the Court to grant immediate urgent interim relief.

We are informed that the application under Section 11 of the said Act is pending before this Court and obviously the Court after taking into account the validity, genuinity and the nature of the dispute will decide the same.

We do not subscribe any view that letter of demand, by which the respondent is called upon to make payment, causes any eminent threat to the rights of the parties nor is capable of being implemented through any recourses except it is recognized under the statutory provision.

In view of the above, we do not find any justification in passing the injunction on an application under Section 9 of the said Act.

The order impugned is set aside. The application under Section 9 of the said Act is dismissed. The appeal is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

