

13.12.2023
32 & 33
as

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri**

**FMAT (ARBAWARD) 3 of 2023
with
CAN 1 of 2023
Binod Kumar Mintri & Ors.
Vs.
Mr. Jigme Deden Shakabpa & Ors.**

With

**FMAT (ARBAWARD) 4 of 2023
with
CAN 1 of 2023
Creative Associates & Ors.
Vs.
Mr. Jigme Deden Shakabpa & Ors.**

Mr. Sounak Bhattacharya,
Mr. Debanjan Das.
...for the Appellants in
FMAT (ARBAWARD) 3 of 2023.

Mr. Mainak Bose,
Mr. Risabh Karnani,
Mr. Vatsal Verma.
...for the Appellants in
FMAT (ARBAWARD) 4 of 2023.

Ms. Sucharita Biswas.
....for the Respondent No.1.

Mr. Anmol Prasad,
Mr. Sagar Chetri,
Mr. Dipankar Deb.
...for the Respondent No.2.

1. By impugned order dated 17th February,
2023 the learned Judge directed maintenance of
status quo in respect of the nature, character and

possession of the schedule property of the partnership firm viz., Kanchan Cinema. By the selfsame order, the learned Judge held transfer of the said property by the legal heirs and representatives of Mintri Group in favour of M/s. Creative Associates is illegal and the respondent No.1/petitioner is entitled to take police help for recovery of the property by instituting a civil suit.

2. Being aggrieved by the aforesaid order, legal representatives of Mintri Group has filed an appeal being FMAT (ARBAWARD) 3 of 2023. M/s. Creative Associates, the purchaser of the said property has sought for leave to prefer appeal and upon being granted leave, has preferred another appeal being FMAT (ARBAWARD) 4 of 2023. Both the appeals are taken up for hearing analogously.

3. Mr. Bhattacharya for the legal representatives of Mintri Group i.e. appellants in FMAT (ARBAWARD) 3 of 2023 contends his clients were unaware of the injunction application and the transfer had been made prior to the passing of the injunction order. He further contends that the respondent No.1/petitioner is not pursuing the arbitration and has instituted a suit being Title Suit No.17 of 2022 seeking various reliefs with regard to the property in question. Accordingly, he prays the order of injunction be set aside.

4. Mr. Basu with Mr. Karnani for the appellant purchaser submit they are not parties to the partnership deed and are not amenable to the arbitration. They had purchased the property for valuable consideration. They, however, admit that the sale has been challenged in the civil suit instituted by the respondent No.1/petitioner.

5. Ms. Biswas for the respondent no.1/petitioner contends that the property belongs to the partnership firm and the appellants in FMAT (ARBAWARD) 3 of 2023 did not have right to unilaterally transfer the property as a sole owner. She also contends that both the appellants were aware of the pendency of the application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') at the time of executing the sale deed as would appear from the recitals in the deed itself. She however, admitted her clients in the meantime have instituted a civil suit being Title Suit No. 17 of 2022 challenging the sale deed and an order of status quo in respect of the property has been passed therein. Legal representatives of Mintri Group have been added as parties in the civil suit and are contesting the suit by filing written statement.

6. What emerges from the submissions at the Bar is that the respondent No.1/petitioner has

instituted a civil suit seeking a declaration that the sale deed is inoperative and not binding upon them. Such relief being sought for before the civil court, it cannot be said that the respondent No.1/petitioner contemplates to invoke arbitration in respect of the aforesaid dispute. Section 9 of the Act of 1996 empowers the civil court to pass appropriate orders of injunction with regard to the subject matter of arbitration in contemplation of arbitration. In the factual matrix of the case it appears though the respondent no.1/petitioner had initially contemplated arbitration, at present they do not intend to pursue such remedy and has instituted a civil suit seeking appropriate reliefs with regard to the property in question.

7. When a party by his conduct has demonstrated disinterest in invoking arbitration, an order of injunction passed under Section 9 of the Act of 1996 in contemplation of arbitration cannot survive.

8. For this reason alone, the impugned order of injunction is liable to be set aside. While doing so, we take notice of the fact that the respondent no.1/petitioner has already approached the civil court in Title Suit No.17 of 2022 seeking a declaration that the sale deed is inoperative and not binding on him. We are also informed an order of

status quo had been passed in the suit in respect of the property in question. The said order shall continue until further orders are passed by the civil court in accordance with law.

9. We make it clear that we have not expressed any opinion with regard to the merits of the case vis-à-vis validity of the sale deed which shall be decided independently and in accordance with law by the civil court.

10. Both the appeals and the connected applications are disposed of.

11. There shall be no order as to costs.

12. Let urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Apurba Sinha Ray, J.) (Joymalya Bagchi, J.)