

D/L
Item No. 02
07.08.2025
KOLE
266301

**AO-COM 23 of 2025
With
CAN 1 of 2025**

**Ikhlaq Hussain Khan
-Vs.-
Kail Limited**

*Mr. Joy Saha,
Ms. Sananda Ganguli,
Mr. Ishaan Saha,
Mr. Satyam Bhinsaria,
Mr. S. Roy,*

...for the appellant.

*Mr. Jishnu Chowdhury,
Mr. Satadeep Bhattacharyya,
Mr. Saptarshi Datta,
Mr. Sriparna Mitra,
Ms. Pooja Sett,
Ms. S. Ghosh,
Mr. P. Kanti Pal,
Mr. Debdut Hore,*

.... For the respondent.

Dictated by Om Narayan Rai J.

Since all the papers that were available before the learned Commercial Court, are there before us, therefore, by consent of the parties, instead of hearing the application, we have heard out the appeal itself.

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter “the said Act of 1996”), assailing an order dated July 9, 2025 passed by the learned Commercial Court at Rajarhat whereby the appellant’s application under Section 9 of the said Act of 1996 (registered as Misc. Arb (Com) No. 12 of 2025) has been disposed by refusing to grant any interim relief to the appellant. By the order impugned, the learned Commercial Court has disposed

of two applications under Section 9, one filed by the appellant herein which was registered as Misc. Arb (Com) No. 12 of 2025 and the other filed by the respondent herein registered as Misc. Arb (Com) No. 8 of 2025.

Briefly summed up, the case run by the appellant, in his application under Section 9 of the said Act of 1996 is as follows:-

- a) The appellant had entered into an agreement with the respondent on August 08, 2024, whereunder the appellant was permitted to demolish the existing warehouse building and other ancillary structures situated at Block-BP, Sector-V, Saltlake, Kolkata-700091 and to take away the wreckage on certain conditions as mentioned in the said agreement. At the time of execution of the agreement, the appellant had furnished an interest free security deposit to the tune of Rs. 50,00,000/- (Rupees Fifty Lakh) only to the respondent.
- b) The work of demolition was to be completed within a period of four months from the date of the agreement with an additional grace period of a month.
- c) It is the appellant's case that no express monetary consideration had been provided for the demolition work and that the appellant was conferred exclusive right to purchase the demolition waste/salvage at a consolidated price of Rs. 6,50,00,000/- (Six Crore Fifty Lakh Only) exclusive of applicable Goods and

Services Tax (GST). The said amount was to be paid in eight instalments and each of such instalment was payable upon release of approximately 300 Metric tons of demolition waste/salvage each time to the appellant. It was decided that while the first seven instalments would be @ Rs.85,00,000 (Rupees Eighty Five Lakh) only each, the last instalment i.e. the eighth instalment would be for a sum of Rs55,00,000 (Rupees Fifty Five Lakh) only thus aggregating Rs. 6,50,00,000/- (Six Crore Fifty Lakh Only) as aforesaid.

- d) In terms of the agreement between the parties, the appellant informed the respondent about the method that would be adopted by him for carrying out the demolition work.
- e) The work of demolition could not commence prior to September 2, 2024, despite the readiness and willingness of the appellant owing to failure on the part of the respondent to act in terms of the agreement. It has been alleged that the respondent had failed to get the requisite approvals and clearances from the relevant statutory authorities timely and had also failed to provide adequate security and welfare facilities at the project site for the workmen of the appellant which led to the trespassing of unauthorised persons at the project site thereby severely impeding the demolition process.
- f) Furthermore, although there was a clear understanding between the parties that excavators

would be used for the purpose of demolition, yet the respondent prohibited such use and instructed the appellant to carry out the demolition work manually. The respondent thus unilaterally changed the work conditions.

- g) It has been further alleged by the appellant that the respondent imposed arbitrary restrictions on the appellant's prompt removal of the debris thereby frustrating the execution of the project.
- h) It has been alleged that although the respondent itself was at fault for non-completion of the demolition work as agreed, yet the respondent went ahead and issued a letter dated March 01, 2025, thereby terminating the agreement between the parties on the alleged ground of delay in performance of the contract.
- i) The appellant responded to the said letter of termination thereby refuting the allegations and indicating that more than 80% of the demolition work had already been completed. It thereafter transpired that the respondent had filed an application under Section 9 of the said Act of 1996 which had been registered as Misc. Arb (Com) No. 8 of 2025 before the learned Commercial Court at Rajarhat wherein an ex parte ad interim order had been granted in favour of the respondent restraining the present appellant from accessing the site in question.

- j) The appellant, therefore, was left with no alternative but to approach the learned Commercial Court at Rajarhat by filing his own application under Section 9 of the said Act of 1996 which was registered as Misc. Arb (Com) No. 12 of 2025.
- k) In the said application the appellant prayed, *inter alia*, for an order of injunction restraining the respondent from giving effect to the termination letter dated March 01, 2025, as also from dealing with and/or alienating and/or creating any third party rights over the demolished material lying at the project site. An order of appointment of a Receiver for taking possession of the demolished material as also for submitting a report containing the details of the demolished material available at the project site was also sought.
- l) Both the aforesaid applications filed by the contesting parties were disposed of by a consolidated order dated July 9, 2025, which has been impugned in the present appeal.

The order impugned has rejected the appellant's request for interim relief observing as follows:-

“From the rival contentions of the parties, it is apparent that the salvage purportedly demolished by Ikhlq Hossain is the subject matter of the Section 9 application filed by Ikhlq Hossain, the protection of which has been prayed by him. It is an admitted position that Ikhlq Hossain has not made any payment

for salvage and that KAIL has not permitted him to take away the demolished materials other than one truck load. It is also noted that a photocopy of the Scrap Sale Agreement in between KAIL Limited and one Jai Jagadamba Enterprises has been filed by KAIL in his affidavit-in-opposition in Misc. Arb (Com) 12 of 2025, (at page 121, marked S) which prima facie shows that KAIL had already entered into an Agreement for sale of the scrap materials lying on the project site on 04.03.2025. It is also admitted that a third party contractor has been engaged in the project site for execution of the balance demolition work. At this stage, this Court fails to find what purpose would be served by appointing a Receiver for assessing the amount of demolition work done by Ikhlaq Hossain at the time when he was engaged as a contractor i.e. prior to 01.03.2025, specially where there is no denial that a third party has already been appointed as a contractor who has been carrying on the work of demolition right after the termination of Ikhlaq Hossain, and with whom the scrap sale agreement has been entered into on 04.03.2025. Furthermore, the project herein, admittedly has a bearing with the construction of World Trade Centre and an order of injunction restraining KAIL from creating any third party interest would also have the effect of interfering with a contract with the third party, who is not a party to this lis. As such, the balance of convenience tilts in favour of KAIL. The

terms of the contract are such that the damages and the loss suffered by Ikhlaz Hossain can be compensated by monetary means and so the factor of irreparable loss is absent. Having regard to the discussion aforesaid, this Court is inclined to pass the order as depicted in the operative portion hereinbelow. Before parting, this Court reiterates that it has refrained from expressing any opinion on the merits of the dispute as regards the validity of the termination of the contract which is to be adjudicated by the learned Arbitrator/Arbitral Tribunal and has only expressed its prima-facie opinion. It is pertinent to mention that sub-section (3) to section 9 of the Arbitration and Conciliation Act, 1996 recognizes that both Courts and arbitral tribunals have the powers to grant interim reliefs and so parties should raise their claims for such interim reliefs before the tribunal, once it is constituted.”

Mr. Saha, learned Senior Advocate, appearing for the appellant submits that the only ground which his client seeks to press at this moment is that there should be an inventory of the quantum of salvage generated thus far upon the demolition work conducted by the appellant. He further submitted that after the agreement between the appellant and the respondent was terminated and a third party was introduced for carrying out demolition work no further demolition work has been undertaken. Such submission has, however, not been accepted by the respondents.

We have perused the documents and the material on record. The following points emerge therefrom:-

- (a) That although the agreement between the parties was executed on August 8, 2024, the work of demolition could not begin till September 2, 2024.
- (b) On March 1, 2025, the agreement between the appellant and the respondent stood terminated.
- (c) On March 4, 2025, the respondent entered into an agreement with a third party authorizing such third party for taking away the scrap generated from demolition. Furthermore, yet another person has been employed by the respondent for the purpose of carrying out the demolition work which was left unfinished by the appellant.
- (d) The appellant has not paid any sum apart from a sum of Rs. 50,00,000/- towards the security deposit to the respondent, out of which a sum of Rs. 25,00,000/- has already been paid back by the respondent to the appellant.
- (e) The appellant has thus far taken away 14 metric tonnes of salvage

We have also noticed that the appellant had approached the Learned Commercial Court with its application under Section 9 of the 1996 Act about one month after the termination of the agreement between the appellant and the respondent (page 215 of the injunction application before us reveals that the affidavit in support of the section 9 application before the Commercial Court was affirmed on April 3, 2025). If indeed,

the appellant wished to get the extent of demolition done by him or the quantum of wreckage generated due to the demolition work conducted by him measured, he ought to have been more prompt. At this distance in time when more than five months have already passed since the appellant exited the project site, it would not serve any purpose to direct a Special Officer to make an inventory of the wreckage for the purpose of ascertaining the quantum thereof as prayed for by the appellant. As already noticed hereinabove, the respondent engaged a third party for taking away the wreckage as far back as on March 04, 2025. By this time much of the wreckage might have been removed as well. Further another person has been engaged for carrying out the balance demolition work. Work must have or might have proceeded in the meantime. A real estimate would, therefore, be impossible. An order of the nature sought by the appellant would be an imprudent exercise of judicial discretion.

In any case, as it appears from the order impugned, the learned Commercial Court has reached a just and proper conclusion that the remedy of the appellant sounds in damages, and that being so, it would be for the appellant to prove his own case which would include the quantum of damage that he claims to have suffered. It would not be proper for the Court to take sides with any of the parties and assist any of them in unearthing the evidence despite the law ordaining that the burden of proving a case remains with the party whose case it is.

One more point which has weighed with the learned Commercial Court, and rightly so, in refusing to pass orders as prayed for is that an Arbitral Tribunal has already been constituted. There is now a statutory interdict in terms of Section 9 (3) of the said Act of 1996 whereby a court is to refrain from passing any interim measure upon the constitution of the Arbitral Tribunal unless the Court finds that circumstances are such that the remedy provided under section 17 of the said Act before the Arbitral Tribunal would not be efficacious.

For all the aforesaid reasons, we find the order dated July 9, 2025 to be unexceptionable. We therefore refuse to interfere with the same

The appeal and the connected application fail and are accordingly dismissed. No costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)