

12.08.2025
Item No.02
Court No.37.
S. De
266311

**FMA 1317 of 2025
With
I.A. No. CAN/1/2025**

**Reliance Projects and Property Management
Services Limited.
Vs.
Indrani Sarangi & Anr.**

Mr. VVV Sastry,
Ms. Khushi Gupta, ...for the appellant.

Mr. Siddharth Sharoff,,
Mr. Diptamoy Talukdar, ...for the respondent.

Dictated by Arijit Banerjee, J.

1. This appeal is directed against an order dated July 2, 2025, passed by the learned Additional District Judge, 8th Court at Barasat in Misc. (Arbitration) 46 of 2024.
2. It appears that the respondent no.1 herein approached the learned Trial Court with an application under Section 9 of the Arbitration and Conciliation Act praying for certain restraint orders against the appellant herein including an order to restrain the appellant herein from removing the machineries installed at the leasehold property without paying the dues of the respondent no.1 herein, who is the owner of the property. This was done on the basis of a lease agreement relating to the concerned property. Apparently, a mobile tower has been set up on

the property. The respondent no.1 herein being the owner of the property claims that there are dues to her from the appellant herein. Hence, the respondent no.1 herein filed the Section 9 application to protect her interest.

3. On October 1, 2024, the learned Trial Court restrained the appellant herein from removing its machineries installed on the leasehold property without paying the dues of the petitioner.
4. Upon receiving notice, the appellant herein approached the learned Trial Court contending that the dispute between the parties was a “*commercial dispute*” within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, and hence the Trial Court lacked jurisdiction to entertain the matter. The appellant herein also challenged the order dated October 1, 2024, by filing FMAT 394 of 2024. By a judgment and order dated June 24, 2025, a co-ordinate Bench of this Court disposed of that appeal. The operative portion of the said order reads as follows :

“Accordingly, FMAT 394 of 2024 is disposed of without entering into the merits of the respective contentions of the parties, by requesting the learned Judge taking up the Section 9 application to dispose of the maintainability application filed

before the said court by the appellant as expeditiously as possible, positively within a fortnight from the date of communication of this order to the said court.

We make it abundantly clear that we have not entered into the contentions of either of the parties on merits and the above observations or the disposal of the appeal shall not unduly influence the learned court taking up the Section 9 application and/or any other court or forum.”

5. It appears that subsequently the Section 9 application appeared before the learned Trial Court on July 2, 2025. We are told that the learned Judge has adjourned the matter till November 11, 2024 and has extended the interim order till that date.
6. Being aggrieved, the respondent no.1 in the Section 9 application has come up by way of this appeal.
7. The appellant argues that on the face of it, the dispute between the parties is commercial in nature and squarely comes within the purview of Section 2(1)(c)(vii) of the 2015 Act. Therefore, the Section 9 proceedings are not maintainable before the learned Civil Judge who lacks jurisdiction to entertain the application.
8. Learned advocate for the respondent no.1 says that this appeal is not maintainable. The respondent no.1 herein not only invoked Section

9 of the 1996 Act but also Section 151 of the Code of Civil Procedure. Therefore, this appeal does not lie.

9. We are not impressed with the argument on the point of maintainability of the appeal.

10. Section 2(1)(c)(vii) defines a commercial disputes as a dispute arising out of, inter alia, *“agreements relating to immovable property used exclusively in trade or commerce”*.

11. On the face of it, the agreement between the parties hereto relates to immovable property used for the purpose of commerce or business. As we noted above, the immovable property in question was leased out for the purpose of installation of a mobile tower. Hence, by no stretch of imagination, it can be said that the dispute is not a commercial dispute.

12. In that view of the matter, the learned Civil Judge would not have jurisdiction to entertain the Section 9 application. The application should be heard by the Commercial Court at Rajarhat.

13. We, therefore, in exercise of power under Section 24 of the Code of Civil Procedure, direct that Misc. (Arb) Case No. 46 of 2024, pending before the learned Additional District Judge, 8th Court at Barasat, be forthwith transferred to the Commercial Court at Rajarhat.

14. The parties shall take all necessary steps to give effect to this order.
15. Since the interim order was passed by a Court lacking jurisdiction, we cannot sustain it or continue it. However, the learned Commercial Court shall consider the issue of passing interim order in favour of the respondent no.1 herein, if so requested by the respondent no.1, as expeditiously as possible and will take a decision on that score within three weeks from the date of transfer of the Section 9 proceedings from the Court of the learned Additional District Judge, 8th Court, Barasat to the Commercial Court at Rajarhat.
16. Considering that the respondent no.1 herein has been enjoying some protection since October 1, 2024, we direct that in the event the appellant herein removes its equipment/machinery from the concerned plot of land, the same shall be done only after inventorization of the same in the presence of the representative of the respondent no.1 herein. Further, such equipment/machinery shall not be disposed of by the appellant herein till a final decision is taken by the learned Commercial Court in the application under Section 9 of the 1996 Act.

17. We make it clear that we have not gone into the merits of the case. All points in the Section 9 application are left open for the learned Commercial Court at Rajarhat to decide upon hearing both the parties.
18. FMA 1317 of 2025 is, accordingly, disposed of along with the connected application being I.A. No. CAN 1 of 2025.
19. The learned Registrar General of this Court is requested to immediately communicate this order to the learned District Judge, Barasat and also to the learned Additional District Judge, 8th Court at Barasat for doing the needful.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)