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28-08-2025  
(Ct. no.37)  
debajyoti  
(Bench ID  
266311)

**FMAT 348 of 2025**  
+  
**IA NO:CAN/1/2025**

**Abode Infradev LLP & Ors.**  
**Vs.**  
**Priya Jeet Developers Pvt. Ltd. & Ors.**

Mr. Joydeep Kar, Sr. Adv.,  
Mr. A. K. Chowdhury,  
Ms. Micky Chowdhury  
... For the Appellants.

Mr. Sukanta Chakrabarty,  
Mr. Anindya Halder  
... For Respondent Nos.1 & 2.

**Dictated by Arijit Banerjee, J.**

1. This appeal is directed against an order dated July 24, 2025 passed by the learned District Judge (in-charge), South 24 Parganas at Alipore in Misc Case (Arb.) No.66 of 2025, whereby the appellants herein have been restrained from *“making any demolition, construction or any other development work over the schedule property or from creating any third party interest over the same in any manner whatsoever till disposal of this petition, on the condition that the petitioners will approach the appropriate authority for initiation of arbitration proceedings by appointment of an Arbitrator within a period of 90 days from the date of this order”*.

2. This order was passed *ex parte* insofar as the present appellants are concerned, on an application under Section 9 of the Arbitration and Conciliation Act, 1996.

3. We heard Mr. Joydeep Kar, learned Senior Counsel, representing the appellants on the merits of

the case for quite some time. Then it was drawn to our attention that the Section 9 application has been filed not before a Commercial Court, although the dispute between the parties is clearly commercial in nature within the meaning of Section 2(c)(vii) of the Commercial Courts Act, 2015.

4. Mr. Chakrabarty, learned counsel, appearing for the respondent nos.1 and 2, in his usual fairness says that indeed, this a commercial cause and should have been filed before the concerned Commercial Court.

5. Without touching the merits of the case and solely on the ground that the learned trial Court did not have the power or jurisdiction to pass the impugned order since the order has been passed in a commercial cause, we set aside the order under appeal.

6. We direct the Section 9 application being Misc Case (Arb.) 66 of 2025 to be transferred from the court of the District Judge (in-charge), South 24 Parganas at Alipore, to the Commercial Court at Alipore. The records of the application should be forthwith transmitted to the Commercial Court at Alipore by the court of the District Judge (in-charge), South 24-Parganas at Alipore definitely within seven days from a copy of this order being placed before the learned District Judge (in-charge)/District Judge, South 24-Parganas at Alipore.

7. The Commercial Court at Alipore shall decide the Section 9 application afresh, in accordance with law, after hearing all the concerned parties.

8. To expedite the matter, we grant liberty to the appellants herein to file their written objection to the Section 9 application before the learned trial Court

within a fortnight from date. Rejoinder thereto, if any, may be filed by the petitioners in the Section 9 application within a week thereafter. The matter will be listed before the learned trial Court after three weeks for hearing and final disposal.

9. Mr. Chakrabarty, learned counsel, requests us to specify a time period within which the Section 9 application should be disposed of by the learned trial Court. We permit the petitioners in the Section 9 application to request the learned trial Court for expeditious disposal of the Section 9 application.

10. The office of the learned Registrar General of this Court is directed to forthwith communicate this order to the learned District Judge (in-charge)/District Judge, South 24-Parganas at Alipore.

11. The appeal and the connected application stand disposed of accordingly.

12. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

13. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

**(Om Narayan Rai, J.)      (Arijit Banerjee, J.)**