

21.08.2025
Item No.05
Court No.37.
S. De
266311

F.M.A.T. 351 of 2025
With
I.A. No. CAN/1/2025

Vicarage Real Estate LLP.
Vs
Indian Institute of Management, Calcutta & Ors.

Mr. Ranjan Bachwat, Sr. Adv.,
Mr. Siddharth Banerjee,
Mr. Shaunak Mukhopadhyay,
Ms. Rishika Goyal, ...for the appellant.

Mr. Sabyasachi Chaudhury, Sr. Adv.,
Ms. Sharmistha Ghosh,
Mr. Anirban Roy,
Mr. Amit Ghosh, ...for the respondent no.1.

Dictated by Arijit Banerjee, J.

1. By consent of the parties, the appeal and the connected application are taken up together for hearing.
2. Under challenge in this appeal is an order dated July 31, 2025, passed by the learned District Judge-in-Charge, South 24 Parganas at Alipore in Misc. Case (Arb.) No. 71 of 2025, on an application filed by the respondent no.1 herein under Section 9 of the Arbitration and Conciliation Act, 1996.
3. The brief facts of the case in so far as relevant for the present purpose, are that the respondent nos. 1 and 2 in the Section 9 application (in

short “Banerjees”) had purchased premises no.218B, Hemanta Mukhopadhyay Sarani, Kolkata, from the erstwhile owners thereof, being the Kars. It appears that the Indian Institute of Management, Calcutta (in short “IIM”) was a tenant in respect of approximately five hundred square metres of area in the said property under the Kars. After the ownership of the property changed and the Banerjees stepped in as the owners, IIM became a tenant under the Banerjees.

4. It further appears that some time in the year 2020, an agreement was entered into by and between the Banerjees and IIM whereunder IIM was to give up vacant possession of the portion of the said premises that it was occupying and was to be rehabilitated in approximately 75 per cent of the area that it was holding after the demolition of the old building and construction of a new building.
5. The appellant herein which is the respondent no.3 before the learned Trial Court, the respondent nos. 4 to 6 being its partners, says that it did not know anything about such agreement. It acquired the property from the Banerjees in 2023 by a registered deed of sale

and it has paid full consideration money therefor.

6. The further case of the appellant is that suddenly an ex parte order of injunction was served on the appellant restraining the appellant from making any construction on the said property and also restraining it from creating any third party interests in respect of the said property. The order was passed on an application under Section 9 of the 1996 Act filed by IIM as has been indicated above.
7. The appellant says that it is not a party to the agreement that was entered into by and between the Banerjees and IIM. The appellant is not a party to any arbitration agreement on the basis of which the Section 9 application can be maintained against it. No adequate reason is recorded in the order under appeal as to why it was necessary to pass an ex parte order of injunction. The issue of delay on the part of IIM in approaching the Court or the issue of any legal right of IIM in respect of the said property was also not adverted to sufficiently or at all.
8. Being aggrieved, the appellant has come up by way of this appeal.
9. We have heard learned counsel for the parties.

10. The Section 9 application is pending before the learned Trial Judge. In so far as the restraint on construction on the suit property is concerned, we do not see how IIM could have obtained such an order. It appears from the documents on record that subsequent to the agreement of 2020 that IIM entered into with the Banerjees, there was further negotiation and there was a fresh agreement / understanding / arrangement between them that in lieu of IIM giving up its right to the concerned portion of the said property, the Banerjees shall pay monetary compensation to IIM to be utilized for instituting a scholarship for needy students. It prima facie therefore appears that IIM has no right in respect of the suit property and, therefore, no right to obtain an order of injunction restraining the undisputed owner of the property being the appellant herein, from making construction thereon.

11. Learned senior counsel for IIM says that the offer that was made by the Banerjees for paying monetary compensation did not fructify into an agreement as such offer was never accepted by IIM. We leave that point open for the learned Trial Court to decide.

12. We set aside the order under appeal in so far as the same restrains the appellant herein from making construction on the concerned property.
13. In so far as the other portion of the order is concerned, we are not inclined to go into the merits of the claim of IIM or the defence that the present appellant may have thereto. We modify the order of injunction restraining the appellant from dealing with the said property to the extent that the appellant shall not deal with the suit property or create any third party interest in respect thereof without keeping apart four hundred square meter area in terms of the agreement between the Banerjees and IIM.
14. We make it clear that we are not deciding anything finally in so far as IIM's claim of its right to possess any portion of the suit property is concerned. That issue will be decided by the learned Trial Court upon hearing both the parties and on exchange of affidavits if the learned Trial Court deems it necessary.
15. The issue of maintainability of the Section 9 application against the present appellant is also left open for the learned trial Court to decide.

16. All the observations made in this order are prima facie and only for the purpose of deciding the present appeal. The learned Trial Court while deciding the Section 9 application shall not be swayed by or take into consideration any observation made in this order.
17. FMAT 351 of 2025 is disposed of along with the application being I.A. No. CAN 1 of 2025.
18. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)