

09.01.2025
SI No.5-6
Court No.37
(gc)

**FMAT (ARBAWARD) 43 of 2024
CAN 1 of 2024**

**Sangita Devi Anchalia
Vs.
Nawab Akhter Mohammad & Anr.**

With

**FMAT (ARBAWARD) 45 of 2024
CAN 1 of 2024**

**Sangeeta Devi Anchalia
Vs.
Nawab Akhter Mohammad & Anr.**

Mr. Jishnu Chowdhury, Sr. Adv.,
Mr. Saumyadeb Sinha,
Ms. Suranjana Chatterjee
...for the Appellant.
Mr. Siddhartha Chatterjee,
Mr. Avirup Chatterjee,
Mr. Rishov Das
...for the Respondent.

1. Both the appeals and the applications are taken up together and disposed of by this common order.
2. The appellant claims to be the owner of the property over which the respondent no.1 has made a claim. It is alleged by the opposite party no.1 that he purchased the said property for a valuable consideration from the opposite party no.2 and while the process of taking possession, the opposite party no.1 had received an information from reliable

source that the present appellant had entered into a development agreement with the opposite party no.2 for the purpose of construction work over the suit property despite the agreement for sale already in force. It is alleged that the opposite party no.1 that on 7th May, 2018, an agreement for sale was executed and pursuant thereof, the opposite party no.1 had paid a sum of Rs.15 lacs of the consideration value on an assurance that the opposite party no.2 shall deliver the peaceful and vacant possession of the suit property to the opposite party no.1 within three years from the date of the agreement for sale. It appears that the applications under Section 9 was un ex parte in which an order was passed on 18th November, 2024 by which the present appellant and the opposite party no.2 were restrained from making any construction over the suit property through any third party and they were also restrained from changing the nature and character till 17th December, 2024 on the condition that the opposite party no.1 shall approach the appropriate authority for initiation of arbitration proceedings by appointment of an Arbitrator within a period of 90 days from the date of the said order.

3. We have been informed that the interim order was extended till 10th February, 2025 on 17th December, 2024. The present appellant presumably did not file any application for vacating the interim order in view of the fact that appeal by that time has been preferred and it appears that the said appeal was to be listed on 18th December, 2024. The reason for not filing the application for vacating the interim order is thus well appreciated. It is also appreciated in view of the fact that the application the appellant has disclosed certain documents which if were allowed to stand at least prima facie demolished the case of the present opposite party no.1 as it appears that the present appellant became the owner of the property by virtue of a registered deed of sale dated 26th February, 1966 and it was mutated in favour of the appellant on 2nd December, 2010 and thereafter a building permit no.2023070114 dated 13th September, 2023 was issued by the Kolkata Municipal Corporation in connection with an application filed by the present appellant on 7th June, 2023 for erection/re-erection/addition/alteration of the building in question. It prima facie appears that the registered deed of sale is in respect of the self-

same property and admittedly by reason of the said document, if it were allowed to stand, the vendor of the said property lost all interest over the said property. It is elementary that a person having no title over the property on the date of conveyance cannot transfer any title to any vendee and any vendee approach the title on the basis of such document cannot enforce a right against the original vendor. Moreover, the agreement for sale is unstamped. While it is open for the learned Trial Court to pass an ad-interim order on an unstamped agreement for sale, it was also the duty of the learned Court to impound the said document in view of the Seven-Judge Bench decision of the Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899 In re, (2024) 6 SCC 1.***

4. While extending the interim order, the learned Trial Court has also ignored the said fact. Moreover, it reveals that one Arjun Chakraborty represented one Sk. Sanwar who had made a complaint that the present appellant is claiming ownership of the property on the basis of a manufactured document of sale executed in 1966. The said sale agreement is a registered agreement and

everyone ought to have public notice of the said agreement. It is important that a buyer before purchasing the property is required to enquire from the relevant Registrar Office and only after obtaining a report on title should buy the property in question.

5. The learned Counsel for the opposite party no.1 has submitted that the learned Advocate, Mr. Arjun Chakraborty may have represented Md. Sanwar, but that does not mean that his knowledge would be included to the opposite party no.1 inasmuch as there is no requirement in law that there shall be a privity of contract between the appellant and the opposite party no.1 (claiming to be the agreement holder) as in an application under Section 9 of the Arbitration and Conciliation Act, the duty of the Court is to preserve the property in question. The said argument is made on behalf of the submission made on behalf of the appellant that there is privity of contract between the appellant the opposite party no.1 and there is no agreement between the parties which would show existence of any arbitration clause. In this regard, the judgment has been cited by the learned Counsel for the opposite party no.1. Although we agree with the submission made on behalf

of the opposite party no.1 that an order of injunction can be passed against a non-party for the purpose of preservation of the assets forming the subject matter of the arbitration agreement. The learned Court is required to find out whether it calls for an ex-parte ad interim order without a notice being served upon the opposite party no.2 (appellant herein) in the conspectus of the fact that a sum of Rs.15 lakh was paid on 7th May, 2018 and according to the agreement for sale, the opposite party no.2 was required to hand over possession to the opposite party no.1 within three years from the date of agreement for sale meaning thereby by May, 2021 and the alleged incident took place on 8th October, 2024. Moreover, the non-disclosure of the document of prior sale also goes to the very root of the matter whether the opposite party no.1 was aware of it or not is irrelevant having regard to the documents now disclosed in this proceeding.

6. On such consideration, we vacate the interim order passed by the learned Trial Court. Although for different reasons as we feel that the learned Trial Court was misled and we do not find any fault with the learned Single Judge. Any construction in the property in

question shall abide by the result of the application filed under Section 9 of the Arbitration and Conciliation Act.

7. The parties shall complete their pleadings on or before 10th February, 2025 and a copy of this order shall immediately be communicated by opposite party no.1 to the opposite party no.2 by speed post with acknowledgement due and in the event the opposite party no.2 fails to appear and file any affidavit in the said proceeding, adverse inference may be taken against the opposite party no.2 (vendor).
8. We make it clear that the learned Trial Court shall dispose of the application under Section 9 of the Arbitration and Conciliation Act, 1996 uninfluenced by the observation made in this order.
9. We request the learned Trial Court to dispose of the application under Section 9 of the Arbitration and Conciliation Act as expeditiously as possible.
10. Accordingly, both the appeals and the connected applications are disposed of.
11. However, there shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)