

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Commercial Division
ORIGINAL SIDE

AP-COM/570/2025

MD ZAKARIA KHAN
VS
MOLLA MOHAMMAD ABDUL KABIR

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date: 3rd November, 2025.

APPEARANCE:

Mr. Soumya Mazumder, Sr. Adv.

Mr. Sumanta Biswas, Adv.

Mr. Supratim Laha, Adv.

Mr. Bikash Shaw, Adv.

Mr. Sk. S. Golam, Adv.

...for the petitioner.

Mr. Siddhartha Banerjee, Adv.

Mr. Abhishek Baran Das, Adv.

Mr. Arko Roy, Adv.

Mr. Shubho Mukherjee, Adv.

...for the respondent.

The Court : The present application has been filed by the Petitioner under Section 9 of the *Arbitration and Conciliation Act, 1996*, seeking interim protection pending commencement of arbitral proceedings. The Petitioner has prayed for the appointment of a Receiver to take possession of the premises situated at Premises No. 4/1, Gobinda Chandra Dhar Lane, Police Station Burrabazar, Kolkata – 700001, to manage the affairs of the tenants allegedly inducted by the Respondent, and for an order restraining the Respondent from inducting new tenants, collecting rents from the existing tenants, and dealing with the monies lying in his bank accounts.

It is the case of the Petitioner that the Respondent is the sole and absolute owner of the aforesaid premises. An Agreement dated 7th November, 1992 was entered into between the Petitioner and the Respondent. The said Agreement envisaged that the Petitioner would construct the new building at his own expense on the aforementioned premises of the Respondent, and would have the right to induct tenants in the newly constructed building and collect rents therefrom. The Respondent, in turn, was entitled to receive rent at the rate of Rs. 1.00 per sq. ft. along with one room measuring 120 sq. ft. on the top floor. The Agreement also contained an arbitration clause.

The construction was completed in the year 2016. In the meantime, the Petitioner had advanced personal loans to the Respondent, amounting in aggregate to Rs. 1.25 Crores, as detailed in the petition. In order to secure repayment of the said amount, the Respondent executed a Declaration dated 24th May, 2016, followed by a Development Agreement dated 24th May, 2016 between the parties. As per the said Development Agreement, the Petitioner was entitled to induct tenants and collect rent until the Respondent repaid the aforesaid personal loan in full.

However, in the year 2020, the Respondent started inducting tenants in the vacant portions of the building without informing the Petitioner and began collecting rent directly from them. The Respondent also restrained the Petitioner from inducting any tenants of his own, and further failed to repay the personal loan of Rs. 1.25 Cr advanced by the Petitioner.

Consequently, the Petitioner instituted Title Suit No. 608 of 2020 before the 3rd Bench, City Civil Court at Calcutta, seeking a decree of declaration and

permanent injunction. The Petitioner obtained a temporary injunction vide order dated 15th March, 2022, which was made absolute by order dated 25th March, 2022.

The Respondent thereafter entered appearance and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, as well as an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. The said suit was dismissed by order dated 26th March, 2025. The Petitioner preferred an appeal against the said order, which too was dismissed vide order dated 30th April, 2025.

In these circumstances, invoking the arbitration clause contained in the Agreement dated 7th November, 1992, the Petitioner has preferred the present application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim protection and reliefs as prayed for hereinabove.

Learned Senior Counsel for the Petitioner submits that the Petitioner had advanced an amount of Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs only) to the Respondent as a personal loan, apart from incurring the cost of construction of the new building at the aforesaid premises. It is submitted that the said loan has not been repaid. Although the loan was advanced in the Respondent's personal capacity and not as part of the original agreement dated 7th November 1992, the same was subsequently acknowledged through a declaration dated 24th May 2015 and a development agreement dated 24th May 2016, under which the Petitioner was entitled to induct tenants and collect rent until repayment of the loan amount. Learned Senior Counsel further submits that the Respondent has breached Clause 6 of the agreement

dated 7th November 1992, which provides that the landlord shall be entitled to receive rent at the rate of Rs. 1.00 per sq. ft. on an average from new tenants, and that the contractor shall make arrangements for such payments. It is alleged that the Respondent, in violation of this clause, has unilaterally inducted new tenants without the Petitioner's consent and has been collecting rent directly from them without rendering any account.

In reply, learned counsel for the Respondent, Mr. Siddhartha Banerjee, submits that the present dispute relates to an agreement executed more than three decades ago, and that the Petitioner's claim is highly belated. The Petitioner had already instituted Title Suit No. 608 of 2020 before the City Civil Court, Calcutta, claiming a right to occupy and manage the property until recovery of the alleged loan. The Respondent had contested the suit and filed applications under Section 8 of the Arbitration and Conciliation Act, 1996, and Order VII Rule 11 CPC. The City Civil Court, by its order dated 26th March 2025, held that the Petitioner had failed to disclose the amounts realized from tenants allegedly inducted in breach of the agreement dated 7th November 1992, and dismissed the suit. The said order was carried in appeal in F.A.T. No. 169 of 2025, which was dismissed by order dated 30th April 2025, thereby affirming the findings of the Trial Court. Learned counsel further contends that the present application is based on unsubstantiated allegations, since the Petitioner has only claimed, on the basis of "reliable sources," that the Respondent is inducting new tenants. Although the application names two alleged tenants, no supporting material has been placed on record to

substantiate the claim. It is urged that the present application, founded merely on apprehension, deserves dismissal.

This Court has heard learned counsel for the parties and examined the record.

It is undisputed that the Respondent is the owner of the property, and that the Petitioner undertook construction thereon under the agreement dated 7th November 1992. The construction was completed in 2016, and it is admitted that between 2016 and 2020 the Petitioner was in possession and had inducted tenants. There is, however, no material to show that the Petitioner has ever disclosed or accounted for the rents collected during that period.

The personal loan of Rs. 1.25 Cr. admittedly stands independent of the said agreement and does not form part of the contractual obligations between the parties.

Whether there has been any breach of the contractual terms is a question to be determined by the Arbitral Tribunal upon consideration of evidence. Such issues fall outside the limited scope of the present proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 which are confined to the grant of interim protection in cases of urgent necessity.

The Court finds no cogent evidence on record to substantiate the allegation that the Respondent has recently inducted new tenants. The statements made in the petition are based on mere assertions and not supported by any documentary proof.

On a prima facie consideration, this Court finds that the Petitioner has not demonstrated any imminent or irreparable injury that would justify interference at this stage. The Respondent, being the lawful owner of the property, is entitled to induct tenants and collect rent therefrom. If the Petitioner ultimately succeeds in arbitration, the Arbitral Tribunal will have the authority to adjudicate upon the alleged breaches and award appropriate monetary compensation.

In view of the above, the Court is of the opinion that the Petitioner has failed to establish the essential requirements for grant of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, namely the existence of a prima facie case, balance of convenience, and irreparable injury. The allegations made remain unsubstantiated, and no immediate relief is warranted.

Accordingly, the present application, being A.P. (COM) No. 570 of 2025, stands dismissed.

(GAURANG KANTH, J.)