

OCD 24

ORDER SHEET  
AP-COM/733/2025  
IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL DIVISION  
ORIGINAL SIDE

ASIA HEALTH CARE DEVELOPMENT PRIVATE LIMITED  
VS  
MURSHIDABAD ZILLA PARISHAD

BEFORE:  
The Hon'ble JUSTICE SHAMPA SARKAR  
Date: 9<sup>th</sup> December, 2025.

*Appearance:*  
*Mr. Kumar Jyoti Tewari, Sr.Adv.*  
*Mr. Amrit Sinha, Adv.*  
*Mr. Aniruddha Tewari, Adv.*  
*Mr. Samriddhi Nayak, Adv.*  
*...for the petitioner*

*Mr. Sakya Sen, Sr. Adv.*  
*Mr. Sunil Gupta, Adv.*  
*Mr. Pallavi Chatterjee, Adv.*  
*Mr. Rishav Deb Barman, Adv.*  
*...for the respondent*

The Court:

1. Affidavit-in-opposition and affidavit-in-reply are taken on record.
2. The application has been filed by the petitioner for appointment of an arbitrator to arbitrate upon the dispute which arose between the parties in respect of the Deed of Agreement dated July 9, 2004. Clause 28 of the said agreement contains an arbitration clause which is as follows:

“In case of any dispute or difference arising between the parties herein or regarding validity and/or interpretation of the agreement the matter shall be referred for arbitration of a sole arbitrator to the District Magistrate, Murshidabad.”

3. Dispute cropped up between the parties with regard to an alleged termination of the tenancy/lease when the respondent issued a letter dated January 11, 2022 on various allegations of neglect and failure to pay the rental agreement. Suspicion was also raised with regard to the actual amount collected by the petitioner to run the hospital and the purported figures which were disclosed to the respondent. Challenging such termination notice, a suit was filed before the Civil Judge (Senior Division) First Court of Murshidabad at Berhampore. In the said suit, the respondent filed an application under Section 8 of the Arbitration and Conciliation Act. Referring to Clause 28 of the said agreement, the respondent contended that the dispute between the parties which arose out of the termination letter should be decided in arbitration. The learned Trial Court rejected the application and granted an injunction till the disposal of the suit. Both these orders were challenged. An appeal was preferred by the respondent before the High Court vide FMA 816 of 2025. The said appeal was allowed by a judgment dated July 15, 2025. The Division Bench was of the view that the dispute between the parties ought to have been referred to arbitration by allowing the application under Section 8 of the said Act. The part of the order impugned by which the injunction was granted in favour of the

petitioner, was held to be without jurisdiction as the Bench was of the view that, the Trial Court was duty bound to refer the entire dispute to arbitration instead of itself entertaining the suit and deciding on the prayer for injunction.

4. Mr. Tewari, learned senior advocate appearing for the petitioner submits that the specific observation of the Division Bench was that the disputes between the parties which were raised in the suit, were governed by the arbitration clause. The disputes were thus, referred to arbitration. Reliance has been placed on the reasons supplied by the Bench, in support of such contention. It is submitted that, the petitioner would be non-suited if an objection is taken by the respondent with regard to supersession of the arbitration agreement. On the prayer of the respondent, the dispute was referred to arbitration, in their appeal. At this juncture, the respondent cannot turn around and object to reference by this Court. Reference here will be a mere formality, after the Division Bench had put the issue at rest, upon holding that the Trial Judge did not have any jurisdiction to continue with the suit and adjudicate the dispute between the parties. Upon disposal of the appeal and as per the observations made by the court of appeal, notice under Section 21 of the said Act was issued by the petitioner. In the said notice, the petitioner had enumerated the disputes which were not limited to, but included termination, arrear rent, audit discrepancies, eviction proceeding, denial of rents, extension etc. Further allegation was that the petitioner had invested more than Rs.20 crores in running

the hospital, in the course of their business. Such claim was recoverable from the respondent. Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of ***Central Warehousing Corporation and Another vs. Sidhartha Tiles & Sanitary Pvt. Ltd.*** reported at **2024 SCC OnLine SC 2983** in support of the contention that even if the special statute governs the process of eviction at the instance of the respondent, the area of operation of the Arbitration and Conciliation Act and the said special statute are entirely different and reference cannot be refused on the ground that a proceeding has been initiated under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred to as 1962 Act).

5. Mr. Sakya Sen, learned senior advocate for the respondent submits that the issue of eviction and termination have also been referred to in the notice invoking arbitration. The right of the respondent to proceed against the petitioner under the 1962 Act, is not an arbitrable issue and as such, the referral court should resist from referring the dispute to arbitration on the question of eviction and termination. It is further submitted that the lease had expired by efflux of time on July 9, 2025 and the petitioner has since become an authorized occupant. Thus, nothing prevents the respondent from evicting the petitioner by taking recourse to the 1962 Act. The notice under the 1962 Act was issued on July 22, 2025, soon after the expiry of the lease and before the notice invoking arbitration was issued.

6. It is not in doubt that the respondent had accepted that the arbitration clause between the parties, existed. On an appeal by respondent, the dispute which arose in the suit was referred to arbitration. The dispute in the suit was primarily with regard to termination of the tenancy prior to expiry of the lease. Moreover, from the notice invoking arbitration it appears that apart from the issue of eviction there were other claims and allegations, which were made by the petitioner. The relevant paragraphs of ***Central Warehousing Corporation (supra)*** are quoted below :-

**“13. Re: Whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996:** This submission has to fail. The reasons are simple and straight forward. The dispute that is raised in the Section 11 application relate to promises and reciprocal promises arising out of the agreement dated 26.09.2012. The right of renewal as well as the legality and propriety of the enhanced demand arose during the subsistence of the agreement. It will be on the interpretation, construction and the obligations arising out of the agreement that the respondent's claim rests. On the other hand, The Public Premises Act authorises the ejection of a tenant in unauthorised occupation of public premises and for consequential directions. The original lease as it were, validly subsisted till 11.09.2015 and the dispute between the parties related to the period commencing from 12.09.2012 to 11.09.2015, when the lease expired. The Public Premises Act would not even cast a shadow on this period. In so far as the dispute relating to this right of renewal is concerned, it depends on the terms of the agreement. The Public Premises Act neither bars nor overlaps with the scope and ambit of proceedings that were initiated under the Arbitration and Conciliation Act.

**14. Whether the High Court committed any error in appointing the arbitrator while exercising the jurisdiction under Section 11:** We have already extracted the relevant portion of the order passed by the High Court. The revision of storage charges occurred during the subsistence of the contract. Its legality and propriety will depend on the terms of the agreement dated 26.09.2012. Similarly, the right of renewal will also be based on and a construct of the said agreement. These two disputes will undoubtedly arise out of the agreement

between the parties and the resolution of such disputes is clearly covered by the arbitration clause (Cl. 16 of the agreement). After the recent decision of this court in *SBI General Insurance Co.* (supra) the remit of the referral court to consider an application under Section 11(6) is clear and unambiguous. We need to just examine the existence of an arbitration agreement. The context is clearly delineated in paras 110-111 and 114 of the judgment which are extracted below for ready reference.

**“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.**

**111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.**

[...]

**114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else.[...]”**

(emphasis supplied)

**15.** For the reasons stated above, we have no hesitation in rejecting the petition and we further hold that the appellant must bear the costs for this unnecessary litigation which we quantify at Rs. 50,000/-.

7. Under such circumstances, I do not find any impediment in referring the dispute to arbitration, irrespective of the fact that an eviction proceeding is pending before another forum. The continuation or validity of such proceeding is not to be gone into by the referral court. The learned arbitrator will adjudicate the disputes in accordance with

law and the respondent will be at liberty to raise the issue of non-arbitrability of any of the claims of the petitioner, in the event such claim overlaps with the jurisdiction of the authority under the 1962 Act.

8. Under such circumstances, the Court appoints Hon'ble Justice Subrata Talukdar, former Judge of this Court, as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.
9. AP-COM/733/2025 is, accordingly, disposed of.
10. The parties are at liberty to proceed with their matter and this Court has only restricted the order to the prayer for reference.

(SHAMPA SARKAR, J.)