

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**CO 2628 of 2025
Akankha Nirman Private Limited & Anr.
Vs.
M/s. Supreme Construction & Ors.**

For the Petitioners : Mr. Aniruddha Chatterjee, Sr. Advocate
Mr. Abir Lal Chakraborty
Mr. Suman Banerjee advocates

For the Opposite Parties : Mr. Piyush Chaturvedi, Sr. Advocate
Ms. Debapriya Ghosh
Mr. Vinayak Chaturvedi advocates

Reserved on : 10.02.2026

Judgment on : 12.02.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against the judgment and order dated June 25, 2025 passed by the learned Civil Judge (Senior Division) Chandannagore, Hooghly in Misc. Appeal No. 13 of 2023 affirming the Order No. 07 dated 24.04.2023 passed by the Learned Civil Judge (Junior Division) 1st Court, Chandannagore, Hooghly in Title Suit No. 64 of 2022.
2. The learned Trial Judge rejected the application under Sections 5 and 8 of the Arbitration & Conciliation Act, 1996 in a suit for mandatory injunction

and, by the impugned order, the Learned Judge of the First Appellate Court affirmed the order of the trial judge.

3. Opposite Party nos. 1 to 5 herein filed Title Suit No. 64 of 2022 for a decree of mandatory injunction directing the petitioners to return the documents as mentioned in Schedule B of the plaint to the opposite parties and to prohibit the petitioner from claiming any right on the basis of documents mentioned in B Schedule of the plaint.
4. The case made out by the opposite parties in the plaint of the said suit in a nutshell is as follows-
5. The opposite party firm became the absolute owner of the A Schedule property by virtue of a sale deed being No. 491 of 2005. After several negotiations between the parties, a development agreement dated 07.03.2012 was executed by and between the opposite party firm and the petitioner company. After execution of the development agreement, the opposite party firm handed over the original documents, as mentioned in Schedule B to the plaint, to the then director of the petitioner no. 1 company as per the request made by the petitioner no. 1 company. Though the opposite party firm delivered permissive possession in favour of the petitioner no. 1 company, but the petitioner no. 1 company without assigning any reason whatsoever, abandoned and left the A schedule property and withdrew their staff therefrom and did not make any endeavour for development of the A Schedule property.
6. The opposite party firm was compelled to serve a legal notice dated 21.04.2021 through their learned advocate for termination and cancellation of the unregistered development agreement dated 07.03.2012 and return back all the original documents mentioned in Schedule B.
7. Alleging that the petitioners are withholding the Schedule B documents wrongfully and illegally, in spite of a demand for return of the documents by the legal notice, the instant suit has been filed.

8. On receipt of the summons of the suit, petitioners filed an application under Section 5 and 8 of the Arbitration & Conciliation Act, 1996 (for short “A&C Act”) praying for stay of all further proceedings of the suit and to refer the parties to Arbitration in view of the existence of the Arbitration clause in the Development Agreement dated 07.03.2012.
9. Opposite parties contested the said application by filing a written objection denying the material allegation contained in the said application.
10. The learned trial judge noted that the present cause of the opposite parties case is founded upon the return of certain documents which were purportedly kept in the custody of the petitioner during the course of such construction and which is alleged to be in their custody till date. The learned trial judge rejected the application under Section 5 and 8 of the A & C Act by the order dated 24.04.2023 upon holding that the present difference of non-return of document by one party to another has nothing to do with the clauses of the agreement.
11. Petitioners unsuccessfully challenged the order of the learned trial judge dated 24.04.2023 before the Learned Judge of the Appellate Court.
12. Mr. Chatterjee, learned Senior advocate for the petitioner drew the attention of the Court to the arbitration clause contained in the development agreement dated 07.03.2012 and vehemently contended that the subject matter of the present suit squarely falls within the expression “any other matter arising out of or in any manner related thereto” used in the arbitration clause. He thus submitted that in view of existence of a valid arbitration agreement, the Courts ought to have referred the parties to arbitration as the preconditions laid down under Section 8 of the A & C Act has been satisfied in the instant case. Mr. Chatterjee further submitted that the learned Judges of the Trial Court and the Appellate Court refused to refer the parties to arbitration being swayed by the fact that the application under Section 8 of the A & C Act was not accompanied by the original arbitration agreement or a duly certified copy thereof by totally overlooking

the proviso to Section 8(2) of the A & C Act. Mr. Chatterjee concluded by submitting that the referral Court is required to see only whether the dispute is alive and the other issues including the arbitrability of the dispute is to be raised before the arbitrator and that the referral Court is not required to deal with such issue. In support of such contention, he placed reliance upon an order dated December 9, 2024 passed by a co-ordinate bench in the case of **Sibaji Naskar & Ors. vs. Manab Paul**¹.

13. Per contra, Mr. Chaturvedi, learned Senior Advocate for the opposite parties contended that an application under Section 8 of A & C Act can be entertained only if it is accompanied by the original arbitration agreement or a duly certified copy thereof. He submitted that since the original arbitration agreement or a duly certified copy was not produced by the petitioner till the hearing of the said application, the application under Section 8 of the A & C Act was rightly rejected by the Court. Mr. Chaturvedi contended that the original agreement is lying in the custody of the petitioners and they have deliberately avoided producing the same before the Court. Mr. Chaturvedi placed reliance upon the decision of the Hon'ble Division Bench in the case of **Exchange and others vs. Pradip Kumar Ganeriwala & Anr.**² in order to highlight the scope of enquiry under Section 8 of the A & C Act.
14. Heard the learned advocates for the parties and perused the materials placed.
15. It is not in dispute that the application under Section 8 of the A & C Act was not accompanied by the original arbitration agreement or a duly certified copy thereof.
16. The learned Senior advocates for the respective parties advanced elaborate arguments on the effect of non-production of the original arbitration agreement or a duly certified copy thereof along with the application under Section 8 of the A & C Act.

¹ A.P./194/2024

² 2025 SCC Online Cal 2380

17. Section 8 of the A & C Act, prior to its amendment by Act 3 of 2016 reads thus-

“8. Power to refer parties to arbitration where there is an arbitration agreement.— (1) *A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*

(2) *The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*

(3) *Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”*

18. The effect of non-filing of the original arbitration agreement or a duly certified copy thereof fell for consideration before the Hon’ble Supreme Court in the case of **Atul Singh and Others vs. Sunil Kumar Singh and Others**³ wherein it was held that non-filing of the original arbitration agreement or a duly certified copy thereof amounts to non-compliance of sub-section (2) of Section 8 which is a mandatory provision and, therefore, the dispute could not have been referred to arbitration.
19. However, the Hon’ble Supreme Court, in the case of **Bharat Sewa Sansthan v. U.P. Electronics Corpn. Ltd.**⁴, approved the view taken by the High Court that the photocopies of the lease agreements could be taken on record under Section 8 of the Arbitration Act for ascertaining the existence of arbitration clause.
20. The issue whether mere non-filing of the original arbitration agreement or a duly certified copy thereof along with the application under Section 8 of the A & C Act would ipso facto result in dismissal of the application fell for

³ (2008) 2 SCC 602

⁴ (2007) 7 SCC 737

consideration before the Hon'ble Supreme Court in the case of **Ananthesh Bhakta v. Nayana S. Bhakta**⁵.

21. The Hon'ble Supreme Court in **Ananthesh Bhakta**⁶(supra) took note of the expression "shall not be entertained" appearing in Section 8(2) of the A & C Act, considered the meaning of the word "entertain" as defined in **P. Ramanath Aiyar's Advanced Law Lexicon** and **Black's Law Dictionary** as well as the decisions of the Hon'ble Supreme Court interpreting the meaning of the word "entertain", and held thus-

"28. Section 8(2) has to be interpreted to mean that the court shall not consider any application filed by the party under Section 8(1) unless it is accompanied by the original arbitration agreement or duly certified copy thereof. The filing of the application without such original or certified copy, but bringing original arbitration agreement on record at the time when the court is considering the application shall not entail rejection of the application under Section 8(2)."

22. In **Ananthesh Bhakta** (supra), the Hon'ble Supreme Court noted that in **Atul Singh's case**⁷, the submission of the respondent therein was noticed that the copy of the partnership deed was on the record of the case, but the Court did not consider the effect of availability of such copies on record.
23. The Hon'ble Supreme Court further observed that in **Atul Singh's case**, which was also a judgment of two judge bench, the earlier judgment in **Bharat Sewa Sansthan**⁸ was not cited.
24. From the aforesaid discussion it follows that mere non-filing of the original arbitration agreement or a duly certified copy thereof shall not entail rejection of the application under Section 8 of the A & C Act, if the same are

⁵ (2017) 5 SCC 185

⁶ (2017) 5 SCC 185

⁷ (2008) 2 SCC 602

⁸ (2007) 7 SCC 737

brought on record at the time when the Court is considering such application.

25. The decision in the case of **Ananthesh Bhakta**⁹ (supra) cannot come to the aid of the petitioner as in the case on hand it is not in dispute that the original arbitration agreement or a duly certified copy thereof was not brought on record at the time when the Court considered the application under Section 8 of the A & C Act.
26. At this stage it would be beneficial to point out that the Law Commission made certain recommendations for amendment of certain provisions of the Arbitration & Conciliation Act, 1996. In the 246th Law Commission Report, the Law Commission while recommending the amendment to Section 8, made the following observation/comment.

“Amendment of Section 8

5. In S. 8 of the Act,

(i) In sub-s. (1), after the words "substance of the dispute, refer" add "to arbitration, such of" and after the words "the parties to" add "the action who are parties to the" and after the word "arbitration" add the word "agreement".

(ii) after sub-s. (1), add "Provided that no such reference shall be made only in cases where-

- (i) the parties to the action who are not parties to the arbitration agreement, are necessary parties to the action;*
- (ii) the judicial authority finds that the arbitration agreement does not exist or is null and void.*

Explanation 1: If the judicial authority is prima facie satisfied about the existence of an arbitration agreement, it shall refer the parties to arbitration and leave the final determination of the existence of the arbitration agreement to the Arbitral Tribunal in accordance with S. 16, which shall decide the same as a preliminary issue;

Explanation 2: Any pleading filed in relation to any interim application which has been filed before the judicial authority shall not be treated to

⁹ (2017) 5 SCC 185

be a statement on the substance of the dispute for the purpose of this section."

L.C. Comment: *The words "such of the parties... to the arbitration agreement" and proviso (i) of the amendment have been proposed in the context of the decision of the Supreme Court in Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya 76 , - in cases where all the parties to the dispute are not parties to the arbitration agreement, the reference is to be rejected only where such parties are necessary parties to the action - and not if they are only proper parties, or are otherwise legal strangers to the action and have been added only to circumvent the arbitration agreement. Proviso (ii) of the amendment contemplates a two-step process to be adopted by a judicial authority when considering an application seeking the reference of a pending action to arbitration. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the Arbitral Tribunal. However, if the judicial authority concludes that the agreement does not exist, then the conclusion will be final and not prima facie. The amendment also envisages that there shall be a conclusive determination as to whether the arbitration agreement is null and void."*

(iii) *In sub-s. (2), after the words "duly certified copy thereof" add "or a copy accompanied by an affidavit calling upon the other party to produce the original arbitration agreement or duly certified copy thereof in a circumstance where the original arbitration agreement or duly certified copy is retained only by the other party."*

L.C. Comment: *In many transactions involving Government bodies and smaller market players, the original/duly certified copy of the arbitration agreement is only retained by the former. This amendment would ensure that the latter class is not prejudiced in any manner by virtue of the same."*

(emphasis supplied)

27. The Law Commission in its 246th Report recommended amendment to Section 8(2) to provide for a remedy to a party when the original/duly certified copy is retained by the other party so that no prejudice is caused to such party.

28. Section 8 of the A & C Act, 1996 was amended by Act 3 of 2016. Sub-section (1) of Section 8 was substituted by Section 4 of Act 3 of 2016 with

retrospective effect from 23.10.2015 and a proviso was inserted by Section 4 of Act 3 of 2016 after subsection (2) of Section 8 with retrospective effect from 23.10.2015.

29. Section 8 of the A & C, 1996 after its amendment by Act 3 of 2016 reads as follows-

“8. Power to refer parties to arbitration where there is an arbitration agreement.— [(1)A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

30. Proviso to Section 8(2) deals with cases where the original arbitration agreement or a duly certified copy thereof is not available with the party applying for reference to arbitration under Section 8(1) and the same is retained by the other party. In such cases, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

31. The effect of a proviso to the main provision in an enactment fell for consideration before the Hon'ble Supreme Court in the case of **J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers**¹⁰, wherein it was held that a proviso is normally used to remove special cases from the general enactment and provide for them specially. The Hon'ble Supreme Court held thus-

“33. A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso as has been canvassed before us. On the other hand an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole, each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.

34. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself.

35. Indeed, in some cases, a proviso, may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be ultra vires of the main provision and struck down. As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justify its necessity.

36. While dealing with proper function of a proviso, this Court in CIT v. Indo Mercantile Bank Ltd. [AIR 1959 SC 713 : (1959) 36 ITR 1] opined:

¹⁰ (1996) 6 SCC 665

“The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.”

This view has held the field till date.”

(emphasis supplied)

32. The Hon’ble Supreme Court in the case of **Durgabai Deshmukh Memorial Sr. Sec. School vs. J.A.J. Vasu Sena**¹¹, reiterated its observations in various other decisions and held that it is settled position of law that the objective of the proviso is to carve out from the main section a class or category to which the main section does not apply. The Hon’ble Supreme Court held thus-

“35. It is a settled position of law that the objective of a proviso is to carve out from the main section a class or category to which the main section does not apply. A proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment.

37. Similarly, in CIT v. Indo-Mercantile Bank Ltd. a three-Judge Bench of this Court, interpreting the meaning of the proviso to Section 24 of the Income Tax Act, 1922 held thus : (AIR p. 718, para 10)

“10. ... The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect.”

(emphasis supplied)

33. The golden rule is that the whole Section inclusive of the proviso is to be read in such a manner that they mutually throw light on each other and result in a harmonious construction.

¹¹ (2019) 17 SCC 157

34. Keeping in mind that the objective of a proviso is to carve out a class or category to which the main section does not apply and the golden rule of construction, to the mind of this Court, the proviso to Section 8(2) carves out a class or category of persons whose application seeking reference to arbitration shall not entail rejection on the ground that the application is not accompanied by the original arbitration agreement or a duly certified copy thereof with a caveat that the application under Section 8(1) shall be filed with a copy of the arbitration agreement and a petition praying before the Court to call upon the other party to produce the original agreement or its duly certified copy before that Court.
35. Section 8(2) inclusive of the proviso should be interpreted to mean that the Court shall not consider any application filed by the party under Section 8(1) unless it is accompanied by the original arbitration agreement or a duly certified copy thereof except in cases where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference and the same is retained by the other party to that agreement. In such cases, the copy of the arbitration agreement shall be considered by the Court for ascertaining the existence of the arbitration clause subject to the applicant filing a copy of the arbitration agreement along with the application under Section 8 and a petition praying before the Court to call upon the other party to produce the original agreement or a duly certified copy before that Court.
36. Any contrary interpretation would frustrate the object of insertion of proviso to Section 8(2) of the A & C Act which is to ensure that a party seeking reference to arbitration is not prejudiced in any manner by the non-availability of the original arbitration agreement or a duly certified copy thereof with him.
37. Now, turning back to the facts of the case in hand, this Court finds that in the application under Section 8 of the Arbitration Act, 1996, the petitioner has specifically stated that the original development agreement dated 07.03.2012 is lying with the opposite party and the petitioner also called

upon the opposite party to produce the same at the time of hearing of the application. It was further stated in the said application that the petitioner has the custody of a true Photostat copy of the said development agreement containing seal and signature of the respective parties and a duly attested copy of the said Photostat copy of the development agreement is filed along with the said petition as Annexure A thereof.

38. The proviso to Section 8(2) requires the applicant Under Section 8(1) who claims that the original arbitration agreement or certified copy thereof is not available with him to file the application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.
39. In the case on hand the application under Section 8 of A & C Act was accompanied with a copy of the arbitration agreement.
40. Mr. Chaturvedi learned Senior Advocate may be right in submitting that a separate petition praying for calling upon the other party to produce the original arbitration agreement or its duly certified copy before that Court has not been filed but the fact remains that in the application under Section 8 of the A & C Act, the petitioner has called upon the opposite party to produce the original development agreement at the time of hearing of the said application. Though a separate prayer calling upon the opposite party to produce the original arbitration agreement was not made but the Court should not be hyper-technical in its approach and the substance of the said application has to be looked into.
41. To the mind of this Court, the application filed by the petitioner under Section 8 of A & C Act satisfies the pre-condition laid down in the proviso to Section 8(2) of the A & C Act. This Court is, therefore, of the considered view that the petitioner falls within the class of persons who may not be required to file the original arbitration agreement or a duly certified copy thereof for the Court to entertain the prayer for referring the parties to arbitration.

42. The learned Judge of the Appellate Court noted that the petitioners neither filed an original arbitration agreement nor a certified copy along with Section 8 Application, nor did they produce it at any stage during its consideration by the learned Trial Judge. It was further noted that no prayer for production of the original agreement was also made. The learned Judge of the appellate Court held that as the mandatory pre-requisites of Section 8(2) were not met, the learned Trial Judge was right in refusing to entertain such application.
43. The finding of the learned Judge of the Appellate Court that there was no prayer for production of the original arbitration agreement at the instance of the petitioner suffers from perversity as the petitioner by filing an application under Section 8 of the A & C Act, called upon the opposite party to produce the original arbitration agreement at the time of consideration of such application. That apart, the learned Judge of the Appellate Court totally overlooked the proviso to Section 8(2) of the A & C Act which was inserted by way of amendment by Section 4 of Act 3 of 2016. Non-consideration of a relevant provision of a statute and perversity are grounds for interference under Article 227 of the Constitution of India.
44. Ordinarily under such circumstances the matter could be remitted to the learned Trial Judge for considering the prayer of the petitioner to call upon the opposite party to produce the original arbitration agreement or its duly certified copy before that Court. However, this Court is not inclined to remit the matter to the learned Trial Judge for the reasons as stated hereinafter.
45. The petitioner has specifically stated in the application under Section 8 of A & C Act that the original development agreement dated 07.03.2012 is lying with the opposite party and accordingly called upon the opposite party to produce the same at the time of hearing of the application.
46. The opposite parties contested the said application by filing a written objection thereto specifically denying the allegation of the petitioner that the original development agreement is lying with the opposite parties. The

positive case of the opposite party in the said written objection is that the original agreement is lying in the custody of the petitioners.

47. Thus, it appears that the opposite party has denied that the original arbitration agreement is being retained by him and the petitioner claims that the original agreement is not available with him.
48. Therefore, no useful purpose would be served in remitting the application to the learned Trial Judge only for the purpose of passing a direction upon the opposite party to produce the original development agreement. Such step would be an idle formality and would also prolong the adjudication of the main issue.
49. The Hon'ble Supreme Court in **Bharat Sewa Sansthan**¹² (supra) while dealing with a similar fact situation held that the photocopies of the agreement could be taken on record under Section 8 of the Arbitration Act for ascertaining the existence of arbitration clause. In that case also it was the specific case of the applicant under Section 8(1) of the Act that the original agreements are lying in the possession of the other party to the agreement whereas the contention of the other party was that the original agreements are not in its possession. The said decision was passed in the light of the provisions laid down under Section 8 of the A & C Act prior to its amendment by Act 3 of 2016.
50. The execution of the development agreement dated 07.03.2012 is admitted by the opposite party. The opposite party has also not disputed the existence of arbitration clause in the development agreement. It is also not the case of the opposite party that the arbitration clause appearing in the copy of the development agreement produced along with Section 8 application differs from that in the original agreement.

¹² (2007) 7 SCC 737

51. The Hon'ble Supreme Court in ***Bharat Sewa Sansthan***¹³ (supra) allowed the photocopies of the arbitration agreement to be taken on record in a fact situation as observed *supra* which is more or less identical to the exceptional situation contemplated under proviso to Section 8(2) of the A & C Act. Thus the proposition of law laid down in ***Bharat Sewa Sansthan*** (supra) shall come to the aid of the petitioner.
52. This Court accordingly holds that when the original arbitration agreement or a duly certified copy thereof is not available with the party applying for reference to arbitration under Sub-section 1 of Section 8 of A & C Act, such application can be entertained if it is accompanied by a copy of arbitration agreement.
53. To the mind of this Court, the photocopy of the development agreement dated 07.03.2012 ought to have been taken on record at the time of consideration of the application under Section 8 of the A & C Act for ascertaining the existence of arbitration clause.
54. This Court shall now proceed to decide whether the learned judges of the Trial Court and the Appellate Court were right in holding that the dispute involved in the instant suit has nothing to do with the clauses of the agreement.
55. The development agreement dated 07.03.2012 contains an arbitration clause. For the purpose of deciding whether the Court should refer the parties to arbitration, the nature and scope of the arbitration clause is required to be taken into consideration. For such purpose the arbitration clause contained in the development agreement dated 07.03.2012 is extracted hereinafter-

“In the event of any dispute or difference arises by and between the parties hereto either concerning or touching upon any of the terms and conditions of the agreement or any obligation arising out of or under the same or any other matter arising out of or any manner related thereto,

¹³ (2007) 7 SCC 737

the same shall be referred to the arbitrator or arbitrators as the case may be, as will be appointed by both the parties in this agreement in accordance with the provisions of the Arbitration and Conciliation Act, 1996 whose decision in the matter would be final and binding. Such arbitration would be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or such statutory modifications thereof as may be conferred at the relevant point of time. All sittings of such arbitration shall be held at Kolkata.”

56. It is the case made out in the plaint that an unregistered development agreement dated 07.03.2012 was executed in between the opposite party firm and the petitioner company and the opposite party firm delivered permissive possession of the A schedule property in favour of the petitioner no. 1 company. The opposite party firm admitted to have handed over original title deed, settlement records, municipal records etc. which are mentioned in Schedule B to the plaint to the then Director of the petitioner no. 1 company. The opposite party firm claims to have served a legal notice dated 21.04.2021 through their learned advocate for termination and cancellation of the unregistered development agreement dated 07.03.2012 and return back the original documents mentioned in Schedule B to the plaint.
57. The date of the legal notice is the date of accrual of the cause of action of the suit and a mandatory injunction has been sought for against the petitioner directing them to return back the document to the opposite party as mentioned in Schedule B to the plaint and also to prohibit them from claiming any right on the basis of B Schedule documents.
58. On a bare reading of the plaint it is evident that the permissive possession of the property was delivered in favour of the petitioner no. 1 company and the documents which has mentioned in Schedule B of the plaint were handed over to the petitioner company after execution of the development agreement. It further appears from the statement made in the plaint that the petitioner no. 1 company requested the opposite party firm to hand over the original documents mentioned in Schedule B to the plaint as the same

would be required by the financial institutions for approval of the housing project upon the schedule property and acting upon such request the opposite party firm handed over all such documents to the then Directors of the petitioner no. 1 company.

59. The handing over of the documents was in connection with the development agreement. The opposite party also claims to have served a legal notice for termination and cancellation of the unregistered development agreement dated 07.03.2012 and return back of the original documents. Cancellation and termination of development agreement is a dispute touching upon the terms and conditions of the agreement or any obligations arising out of or under the same.
60. The documents mentioned in Schedule B to the plaint were handed over by the opposite party firm to the petitioner company to facilitate development of the A Schedule property in terms of the development agreement. Opposite party has sought for return of the documents upon termination and cancellation of the development agreement.
61. Termination and cancellation of development agreement and return of documents are intertwined and, therefore, this Court holds that the dispute and difference between the parties for return of documents mentioned in Schedule B to the plaint is a dispute which would squarely fall within the expression “any other matter arising out of or any manner related thereto” appearing in the arbitration clause.
62. The issue as to “who decides arbitrability ?” fell for consideration before the Hon’ble Supreme Court in the case of **Vidya Drolia v. Durga Trading Corpn.**¹⁴. The decision on the aforesaid issue was summed up under various sub-paragraphs of paragraph 154 of the said reports wherein it was held that the scope of judicial review and jurisdiction of the Court under Section 8 and 11 of the Arbitration Act is identical but extremely limited and restricted. It was further held that the arbitral tribunal is the preferred first

¹⁴ (2021) 2 SCC 1

authority to determine and decide all questions of non-arbitrability and the Court has been conferred power of second look on aspects of non-arbitrability post the award in terms of sub-clauses (i),(ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act. It was further held that rarely as a demurer the Court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would to some extent, determine the level and nature of the judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The Court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. It was further held that this is not the stage for the Court to enter into mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold the integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

63. Justice Ramana delivered a separate judgment supplementing the views expressed by two other Hon’ble Judges. The conclusions of His Lordship was summed up in various sub-paragraphs of Paragraph 244 of the said reports wherein it was held that the subject matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act unless it is a clear case of dead wood. The scope of the Court to examine the prima facie validity of an arbitration agreement was also summed up in the same paragraph. The Hon’ble Supreme Court held thus-

“244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. *The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.*

244.4. *The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.*

244.5. *The scope of the court to examine the prima facie validity of an arbitration agreement includes only:*

244.5.1. *Whether the arbitration agreement was in writing? or*

244.5.2. *Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?*

244.5.3. *Whether the core contractual ingredients qua the arbitration agreement were fulfilled?*

244.5.4. *On rare occasions, whether the subject-matter of dispute is arbitrable?”*

64. The Hon’ble Division Bench in **Pradip Kumar Ganeriwala**¹⁵ (supra) held that if there is a valid arbitration agreement and the dispute involved in suit and the reliefs claimed therein come within the ambit of the arbitration clause there is no option for the Court exercising jurisdiction under Section 8 of the 1996 Act to refuse reference to arbitration, if the defendant choses to file an application under Section 8 in proper format. The said decision cannot come to the aid of the opposite party herein. The same, however, supports the case of the petitioner.

65. In **Sibaji Naskar**¹⁶ (supra) the co-ordinate bench while deciding an application under Section 11 of the Arbitration and Conciliation Act 1996 seeking appointment of an Arbitrator held that the referral Court is required to see only whether there is an arbitration clause and whether the dispute is alive. The other issues raised by a party namely pendency of a suit, limitation, arbitrability of the dispute was left open to be raised before the learned Arbitrator.

¹⁵ 2025 SCC Online Cal 2380

¹⁶ A.P./194/2024

66. In view of the aforesaid discussion it follows that the subject matter of arbitrability cannot be decided at the stage of Section 8 of the Arbitration and Conciliation Act unless it is a clear case of dead wood and the Court would by default refer the matter when contentions relating to non-arbitrability are plainly arguable.
67. In the case on hand the arbitration agreement cannot be said to be non-existent or invalid or the disputes between the parties also cannot be said to be non-arbitrable. It is also not a clear case of deadwood. The contention raised by the opposite party relating to non-arbitrability of the dispute are plainly arguable and for such reason this Court holds that the questions of non-arbitrability sought to be raised by the opposite party should be left for the determination and decision of the arbitral tribunal. The learned judges of the Trial Court and the Appellate Court conducted a mini trial at the Section 8 stage which is impermissible.
68. The learned judges of the Trial Court and the Appellate Court failed to appreciate that the scope of judicial review and jurisdiction of the Court under Section 8 of the Arbitration and Conciliation Act is extremely limited and restricted and the Courts should not venture to determine and decide the question of non-arbitrability when as per the legislative mandate of Act 3 of 2016 and Act 33 of 2019 the arbitral tribunal is the preferred first authority to decide and determine such issue.
69. The learned judges of the Trial Court and the Appellate Court failed to consider the effect of insertion of the proviso to Section 8(2) of the Arbitration and Conciliation Act and the findings of the Appellate Court also suffers from perversity as observed hereinbefore.
70. The case on hand satisfies the tests laid down by the Hon'ble Supreme Court for interference in exercise of powers under Article 227 of the Constitution of India.
71. For all the reasons as aforesaid the Civil Revision Application stands allowed. The judgment dated 25.06.2025 passed by the learned Civil Judge

(Senior Division), Chandannagore in Misc. Appeal No. 13 of 2023 and the order being no. 7 dated 24.04.2023 passed by the learned Civil Judge (Junior Division), 1st Court Chandannagore, Hooghly in Title Suit no. 64 of 2022 are set aside. The application under Section 8 of the Arbitration and Conciliation Act 1996 stands allowed. Consequently the parties are referred to arbitration.

72. There shall be no order as to costs.

73. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

Later:

Date:12.02.2026

After this judgment is pronounced in open Court, the learned advocate appearing for the opposite party prays for stay of operation of the judgment.

Such prayer is opposed by the learned advocate for the petitioner.

The prayer for stay is considered and stands rejected.

(HIRANMAY BHATTACHARYYA, J.)