

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Chaitali Chatterjee (Das)

F.M.A.T. 26 of 2025

Ratan Kumar Agarwal

Vs.

M/s Asmi Construction & Ors.

With

IA No.: CAN 1 of 2025

For the Appellant

: Ms. Reshmi Ghosh, Advocate (through VC)
Mr. Deborshi Dhar, Advocate
Mr. Prana Mukherjee, Advocate

Heard & Judgment on

: January 6, 2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a plaintiff and directed against Order No. 2 dated December 3, 2025 passed in Title Suit No. 133 of 2025. Appellant is aggrieved by the refusal of ad-interim temporary injunction by the learned Trial Judge.
2. Appellant entered into a development agreement dated September 28, 2018 with the respondent.
3. The appellant contends that the respondent did not act in terms of the development agreement. Appellant, therefore, filed a suit being Title Suit

No. 133 of 2025 in the Court of the learned Civil Judge, Senior Division at Siliguri seeking cancellation of the development agreement dated September 28, 2018.

4. Coordinate Bench in the appeal passed orders dated December 16, 2025 and December 22, 2025. Coordinate Bench granted interim order of injunction in the appeal.
5. In order to grant an order of injunction, in a pending suit, a Court is required to return a finding on the existence of three essential conditions, namely, *prima facie* case, balance of convenience and the question of irreparable loss, if the injunction as prayed for is not granted. While considering the existence of a *prima facie* case, a Court is required to also arrive at a finding that, it possesses requisite jurisdiction to try, entertain and determine the suit. Existence of requisite jurisdiction is an integral part of the plaintiffs making out a *prima facie* case to go to trial.
6. As the appeal is directed against an order refusing to grant ad-interim injunction, we insisted the appellant to satisfy the issue as to whether Title Suit No. 133 of 2025 was maintainable in view of the provisions of the Commercial Court's Act, 2015 or not, at least at the *prima facie* level.
7. Learned advocate appearing for the appellant submits that the appellant was seeking cancellation of development agreement. She refers to the various clauses of the development agreement. She submits that, 50% of the constructed area was to be allocated to the appellant. Such 50% of

the constructed area was residential units. Therefore, the suit did not involve a commercial dispute within the meaning of the Act of 2015.

8. Learned advocate appearing for the appellant draws the attention of the Court to Section 2(1)(c)(vii) of the Act of 2015. She submits that the immovable property concerned is not being used exclusively for commercial purpose as the development agreement was never worked out. She points out that the suit was for cancellation of the development agreement itself. Therefore, the question of exclusive user of the building for commercial purposes was not there.
9. Relying upon **(2020) 15 Supreme Court Cases 585 (Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and Another)**, learned Advocate appearing for the appellant submits that, since the immovable property was not being used exclusively for commercial purposes, the suit was maintainable in the Court in which it was filed.
10. As noted above, the suit is for cancellation of development agreement. Relevant portions of the development agreement, to which, our attention is drawn by the appellant, are as follows:

***“1.4 Building shall mean the building (comprising P+5 or P+6 floors) commercial cum residential type, to be constructed at the said premises with the maximum Floor Area Ratio (FAR) available or permissible under the Rules and Regulations of the Siliguri Municipal Corporation for the time being prevailing as per the plan or plans to be sanctioned by the Siliguri Municipal Corporation.*”**

- 1.5 Unit shall mean the constructed area and/or spaces in the building intended to be built and/or constructed capable of being occupied and enjoyed separately as a distinct entity in the building to be constructed at the said premises.**
- 1.9 Saleable Area shall mean the space or spaces in the new building available for independent use and occupation after making due provisions of common facilities and the space required therefor.**
- 1.11 Owner's Allocation shall be 50% of the total constructed area/Sale proceeds of the same on the Schedule-A land of the proposed building, subject to the available area as per the plan or plans to be sanctioned by the Siliguri Municipal Corporation for the proposed building to be constructed at the said premises, including the common facilities, together with all amenities to be allocated to the Owner as part consideration for permitting the Developer to develop the said premises and commercially exploit the same.**
- 1.12 Developer's Allocation shall mean the remaining super built-up area comprising the remaining flats/commercial space in each floor and the remaining garages in the ground floor of the building as per the plan or plans to be sanctioned by the Siliguri Municipal Corporation for the proposed building to be constructed at the said premises including the common facilities which shall absolutely belong to the Developer after providing for the Owner's Allocation as aforesaid under this agreement, it being expressly agreed that this will not prevent the Developer from entering into any agreement**

for sale and transfer in respect of the Developer's Allocation.

- 4.1** *The Owner hereby grants, subject to the provisions contained herein, exclusive right to the Developer to build upon and to commercially exploit the said Premises upon the demolition of the old structures standing thereon and constructing the new building at the said premises in accordance with the plan or plans to be sanctioned by the Siliguri Municipal Corporation with or without any modification and/or amendment and/or amendment thereto made or caused to be made by the parties hereto.*
- 5.1** *In consideration of the Owner allowing the Developer to develop the said premises the Developer shall allocate 50% of the total constructed area/Sale proceeds of the same on the below mentioned Schedule A land, of the proposed building to be constructed at the said premises, including the common facilities, together with all amenities to be allocated to the Owner as Owner's Allocation as defined in Article 1.11 hereinabove. The specifications of the said residential flat being the Owner's Allocation has been described in a separate sheet annexed to these presents.*
- 12.1** *The Developer hereby agrees and covenants with the Owner to complete the construction of the Owner's allocation in the new building at the said premises in terms of the sanctioned plan/s within a period of 48(forty eight) months from the date of obtaining the sanctioned Plan from the Siliguri Municipal Corporation subject to the obtaining of vacant possession of the said*

premises from the Owner for the purpose of development. Such period shall however exclude any delay, which does not occasion due to any fault or negligence on the part of the Developer in the course of construction.”

11. In addition to the clauses of the development agreement to which our attention was drawn, we find that there is a clause for referring the disputes to arbitration which is as follows:

“17.0 In case of any dispute, difference or question arising between the parties hereto with regard to this Agreement, the same shall be referred to the arbitration of an arbitrator to be appointed by the parties herein. If the parties do not agree upon an arbitrator, each party shall be entitled to appoint an arbitrator and the arbitrators shall appoint an umpire and the proceedings shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and/or any other statutory modification and/or enactment relating thereto.”

12. Prayers in the plaint of the suit of the appellant are as follows:

“Under the circumstances it is humbly prayed that the Learned Court may graciously be pleased to pass orders
a) A decree for cancellation of the Development Agreement dated 28th September, 2018 being No.I-2355 for the year 2018 registered in the office of the ADSR Siliguri.

- b) A decree for cancellation of the Power of Attorney dated 28.09.2018***
- c) A decree for recovery of possession of the suit land evicting the defendants therefrom and reinstating the plaintiff therein.***
- d) A decree of mandatory injunction directing the defendants and/or his men, agents and assigns to forthwith handover vacant and peaceful possession of the suit property to the plaintiff;***
- e) A decree of permanent injunction restraining the defendants and his men and agents and/or assigns from making any construction on the suit property;***
- f) A decree of permanent injunction restraining the defendants from changing the nature and character of the suit land measuring about 15 kathas, more or less, situated within Pargana Baikunthapur, Mouza-Siliguri, Post Office and Police Station- Siliguri, District-Darjeeling;***
- g) A decree for permanent injunction restraining the defendants from creating any third-party interest in the suit land in any manner whatsoever.***
- h) Temporary injunction in terms of prayer (d);***
- i) Damages;***

j) Cost;

***k) Such further relief and/or reliefs as this Learned Court
may deem fit and proper.”***

13. Appellant valued his suit at Rs.9,38,00,000/- (Rupees Nine crore thirty-eight lacs only) as appearing from paragraph 50 of the plaint. Suit is valued in excess of the specified value under the Act of 2015. There exists a Commercial Court for the purpose of adjudicating commercial disputes within the meaning of Section 2(1)(c) of the Act of 2015 so far as the present title suit is concerned. Suit property is situate within the territorial jurisdiction of the Commercial Court established under the Act of 2015. The suit is, therefore, to be tried by the Commercial Court established under the Act of 2015 if the subject matter involves “commercial dispute” within the meaning of the Act of 2015.
14. Issue before us is whether or not the disputes in the suit involve a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015.
15. Taking the averments in the plaint as true and correct for the purpose of assessing whether the disputes involved in the suit, are commercial disputes within the meaning of Section 2(1)(c) of the Act of 2015 or not, we find that the appellant as the plaintiff, seeks cancellation of the development agreement.

16. Clause 1.4 of the development agreement defines the 'Building' which is required to be erected. Essentially, the development agreement required the developer to demolish the existing structure at an immovable property and construct a new building thereon. The new building is defined in Clause 1.4 of the development agreement to mean comprising of P+5 or P+6 commercial-cum- residential type to be constructed with the maximum Floor Area Ratio (FAR) available or permissible.
17. Clause 1.5 defines the 'Unit' which means the constructed area while Clause 1.9 defines the 'Saleable Area' and Clause 1.11 defines the 'Owner's Allocation'. Clause 1.12 defines the 'Developer's Allocation'. Clause 1.11 allows the developer to develop the premises and commercially exploit the same. Clause 1.12 also refers to commercial space in the building. Clauses 1.4 to 1.12 falls within the definition clauses of the development agreement.
18. The definitions of the various words used in the development agreement, are appearing in the development agreement, establishes that, a building is required to be erected by the developer on the specified area which will consist of both of residential and commercial unit. Developer will commercially exploit the immovable property concerned. Owners will be entitled to 50 per cent of the constructed area while the developer will be entitled to the remaining 50 per cent of his constructed area.
19. Developer's rights are enumerated in Article IV of the development agreement. Clause 4.1 thereof records that the plaintiff as the owner

granted exclusive rights to the developer to build upon and to commercially exploit the immovable property upon the demolition of the old structure and construction of a new building.

20. Article V of the development agreement deals with the consideration. Clause 5.1 specifies that, in consideration of the appellant as the owner allowing the developer to develop the premises, the developer shall allocate the 50 per cent of the total constructed area/sale proceeds to the owner.
21. Article XII deals with the developer's obligations. Clause 12.1 specifies that the developer agrees to complete the construction of the owner's allocation in terms of the sanctioned plan within a period of 48 (forty eight) months from the date of obtaining of the sanctioned plan.
22. The grant of the development agreement was for commercial exploitation of the immovable property concerned. The development agreement contemplates a building with commercial units. The consideration of the development is the developer receiving 50 per cent of the newly constructed building.
23. So far as the developer is concerned, it is entering into the development agreement for commercial exploitation of an immovable property. From the point of view of the owner also, the development agreement is for commercial user/exploitation of the immovable property concerned.
24. **Ambalal Sarabhai Enterprises Limited** (supra) is of the view that, disputes which actually answers the definition of commercial dispute as

provided under Section 2(1)(c) of the Act of 2015 must be entertained by the Commercial Court. It is also of the view that, a strict compliance of the Act of 2015 is required for such purpose. It goes on to hold that the expression 'commercial disputes' are those disputes which arise out of agreements relating to immovable property used exclusively in trade or commerce. The immovable property must be actually used for trade and commerce and not likely to be used or ready for used.

25. Applying the ratio of ***Ambalal Sarabhai Enterprises Limited*** (supra), in the facts and circumstances of the present case, we find that, the parties to the development agreement entered into such development agreement for the purpose of commercial exploitation of an immovable property. The development agreement itself is an act of commerce. It is subsisting according to the appellant itself. The appellant filed the suit for cancellation of the development agreement on the plea of failure of the developer to act in terms of the development agreement. User of the immovable property for the commercial purposes is, therefore, established.
26. Appellant as the plaintiff seeks cancellation of the development agreement. The fact that, a development agreement is sought to be cancelled through a civil suit filed before a Civil Court will not make the dispute a 'non-commercial dispute' if the dispute between the parties should otherwise satisfy the condition of a commercial dispute within the meaning of the Act of 2015. As noted herein, the development

agreement, cancellation of which is sought for was entered into for the purpose of commercial exploitation of the immovable property concerned. The development agreement is still subsisting unless cancelled. Development agreement permits the developer commercial exploitation of the immovable property. The development agreement, therefore, is a continuous use of an immovable property concerned for commercial purposes.

27. In such circumstances, we are of the *prima facie* view that, the suit filed before the non-commercial Court is not maintainable, since the disputes involved in the suit are commercial disputes within the meaning of Section 2(1)(c)(vii) of the Act of 2015.
28. On the score of balance of convenience and irreparable injury, we find that the development agreement is of September 28, 2018 and the suit is of 2025. Moreover there exists an arbitration agreement between the parties.
29. In the facts and circumstances of the present case, we are of the view that, the appellant is not entitled to ad-interim order of injunction as various issues as noted above exist requiring the Court to afford an opportunity of hearing to the defendants prior to grant of an order of injunction.
30. In such circumstances, we find no ground to intervene on the decision of the learned Trial Judge refusing to grant ad interim order of injunction.

31. We make it clear that our observations are *prima facie* in nature and made for the purpose of consideration of an appeal directed against an order refusing to grant ad interim injunction. These observations shall not prejudice any of the parties to the suit.
32. **FMAT 26 of 2025** and the connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

33. I agree.

(Chaitali Chatterjee (Das), J.)

(SD/AD)