

OCD-4

APOT/324/2025
WITH AP-COM/543/2025
IA No.GA-COM/1/2026

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
Original Side

MD. ZAKARIA KHAN

-VERSUS-

MOLLA MOHAMMAD ABDUL KABIR

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 30th January, 2026.

Appearance:
Mr. Supratim Laha, Adv.
Mr. Bikash Shaw, Adv.
...for the appellant.

Mr. Siddhartha Banerjee, Adv.
Mr. Abhisek Baran Das, Adv.
Mr. Soumajit Majumdar, Adv.
Ms. Triparna Sarkar, Adv.
Mr. Shubho Mukherjee, Adv.
...for the respondent.

The Court :- Appeal is at the behest of the petitioner who applied under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection pending commencement of arbitral proceeding.

Appeal is against the order dated November 3, 2025 passed in AP-COM/52//2025.

Learned advocate appearing for the appellant submits that, appellant is one of the tenants of an immovable properties lying and situated at premises No. 4/1, Gobinda Chandra Bhar Lane, Police Station- Burrabazar, Kolkata-

700 001. He submits that, two several agreements were entered into between the appellant on one part and the respondent on the other with regard to development of the immovable property concerned. In terms of such two development agreements, appellant advanced a sum of Rs.1.25 crores to the respondent. Appellant also undertook a construction and development of the premises concerned. He submits that, appellant is entitled to recover the advance granted as also the costs of construction from the respondent.

Learned advocate appearing for the appellant draws the attention of the Court to various clauses of the two agreements. He submits that, in terms of the various clauses of the two agreements, appellant was permitted to identify the tenants to be inducted at the newly constructed premises. Appellant was permitted to fix the rent for the newly inducted tenants. Respondent was entitled to rent at the rate of Re.1 per sq.ft. The balance amount of rent was receivable by the appellant. The respondent is now seeking to resile from such agreed terms and conditions.

Learned advocate appearing for the appellant submits that, the construction was completed in 2016. Cost of construction and the amount advanced were not recovered from the respondent. In fact, the respondent did not repay the advance or the cost of construction.

Learned advocate appearing for the appellant submits that the appellant filed title suit seeking various reliefs. Such suit was dismissed under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the finding that the appellant did not seek specific performance of the two agreements. Appeal carried therefrom was also dismissed. He points out that in such title suit, the

respondent applied under Section 8 of the Arbitration and Conciliation Act, 1996 contending that, there was an arbitration agreement between the parties. Consequently, the appellant applied under Section 9 of the Act of 1996 for the interim protection.

Learned advocate appearing for the appellant submits that the appellant will be rendered remediless in the event interim protection, as sought for by the appellant is not granted. According to him, learned trial Judge erred in not granting interim protection as prayed for. The respondent, at the basic minimum should be restrained from inducting any new tenants at the property concerned.

Respondent is represented.

We find from the records that two agreements were entered into between the parties. Both the agreements concerned the development and construction of the premises No.4/1, Gobinda Chandra Dhar Lane, Burrabazar Police Station, Kolkata- 700 001.

Essentially, the claim of the appellant is for specific performance of the two agreements. In the interregnum, pending adjudication of such claim of the appellant, interim protection is sought for on behalf of the appellant which the learned single Judge in the impugned order was pleased to refuse.

Learned trial Judge proceeded on the basis that the claim of the appellant was a money claim. We find no material to the contrary. Essentially, the appellant is seeking specific performance of the two agreements in order to say that, the money claim of Rs.1.25 crores and the monthly income out of the induction of new tenants should go to the appellant.

A large period of time lapsed from the completion of the construction of the building. Construction of the building apparently was completed in 2016. It is the allegation of the appellant that, the respondent started inducting tenants without the consent and permission of the appellant from the year 2020 onwards. A considerable period of time elapsed from the date when the construction was completed and the date when it is alleged that, the respondent acted in breach of the agreement by inducting new tenants and the initiation of the present proceeding.

In the interregnum the title suit which was filed by the appellant before us, stood dismissed on the ground as noted above. It is contended that, the appellant enjoyed an interim protection in the said suit. However, the interim order passed in the suit is not made available to us at the hearing of the appeal.

In such circumstances, we find no ground to interfere with the discretion exercised by the learned Single Judge.

APOT/324/2025 along with all connected application are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)