

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA 816 of 2025
With
CAN 1 of 2025
With
FMAT 167 of 2025

Murshidabad Zilla Parishad
-vs-

The Asian Health Care Development Private Limited and Ors.

For the appellant : Mr. Sakya Sen, Sr. Adv.
Mr. Sunil Gupta,
Mr. Rishav Deb Barman,
Mr. Hasibul Islam.

For the respondent
Nos. 1 and 2 : Mr. Kumar Jyoti Tewari, Sr. Adv.
Mr. Amrit Sinha,
Mr. Aniruddha Tewari.

For the respondent
Nos. 5 to 7 : Mr. Anirban Ray, Sr. Adv.
Mr. Shayak Mitra,
Mr. D. Chakraborty.

Heard on : July 15, 2025.
Judgment on : July 15, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present two appeals have been preferred against the same order. In FMAT 167 of 2025, the grant of injunction in favour of the plaintiff/respondent no. 1 has been assailed whereas in FMA 816 of 2025, the rejection of an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the defendant no. 1/appellant has been challenged under Section 37 of the 1996 Act.
2. The main premise on which the application under Section 8 was refused by the learned Trial Judge was that the defendant no. 2 was a non-signatory to the arbitration agreement and as such, the parameters of Section 8 are not satisfied.
3. Before the Trial Court, the plaintiff/respondent no. 1 also took an objection to the effect that the original lease agreement containing the arbitration clause (Clause 28) was not produced.
4. Learned Senior Counsel appearing for the defendant no. 1/appellant argues that the principal relief in the suit has been

sought against the defendant no. 1. Moreover, the entire gamut of the reliefs sought in the suit revolves around the lease agreement containing the arbitration clause. Relief 'A' in the suit is for declaration that the said deed of agreement dated July 9, 2004 and the subsequent agreement dated March 3, 2005 executed between the plaintiff no. 1 and defendant no. 1 are subsisting and relief 'B' is to the effect that the plaintiff no. 1 is still a lessee in respect of the suit property on the basis of the subsisting lease agreement dated July 9, 2024.

5. Thus, it is argued that the defendant no. 2 was impleaded merely to obviate a reference to arbitration.
6. Learned Senior Counsel for the appellant takes the court through the pleadings of the plaint and argues that no cause of action has been disclosed against the defendant no. 2 and as such, there cannot be any hindrance in the court referring the matter to arbitration.
7. Learned Senior Counsel appearing for the appellant further contends that the entire claim of the defendant no. 2, which was a successful bidder in a tender floated by the defendant no. 1 for the purpose of granting fresh lease, is through such

tender and as such, through the defendant no. 1. Hence, as per the plaint pleadings, no independent right of the defendant no. 2 has been disclosed. Thus, since the defendant no. 2 claims through the defendant no. 1 for the purpose of the suit, the agreement containing the arbitration clause also binds the defendant no. 2.

8. At best, it is argued that the defendant no. 2 can have a cause of action against the defendant no. 1 in the event the work order issued in favour of defendant no. 2 is not fructified. However, the same cannot determine the outcome of the Section 8 application within the conspectus of the present suit, as framed.
9. Learned Senior Counsel next argues that although the original of the agreement was not filed with the Section 8 application, a copy duly certified by an officer of the defendant no. 1/appellant was filed with the same. That apart, it is argued that as the original agreement is already a part of the records in the suit and the existence of the same is admitted and relied on by the plaintiffs, there was no further necessity to produce the documents along with the Section 8 of application.

10. Learned Senior Counsel for the appellant cites *Ananthesh Bhakta represented by Mother Usha A. Bhakta and Ors. vs. Nayana S. Bhakta and Ors.*, reported at (2017) 5 SCC 185, where the Supreme Court, inter alia, held that the plaintiffs therein were admittedly parties to the arbitration agreement and it did not lie in their mouth to contend that since one of the defendants whom they had impleaded was not a party to the arbitration agreement, no reference can be made to the arbitrator. In the facts of the said case, it was held that merely because one of the defendants was not a party to the arbitration agreement, the dispute between the parties, which essentially related to the benefits arising out of the retirement deed and partnership deed, could not be said to not being amenable to reference to arbitration.
11. Learned Senior Counsel next cites a Division Bench judgment of this court in *Exchange and Ors. vs. Pradip Kumar Ganeriwala and Anr.* reported at 2025 SCC OnLine Cal 2380 where it was observed, inter alia, that the nature of reliefs claimed in the plaint are to be looked into in a Section 8 scenario and where the reliefs sought in the suit against the non-signatories to the arbitration agreement are in harmony

with the reliefs sought against the signatories, particularly when the legal relationship between the signatories and non-signatories are on the same platform vis-à-vis the cause of action of the suit and the reliefs claimed, the non-signatories may very well be brought within the purview of the arbitration agreement. The court also took into consideration the definition of “arbitration agreement” in Section 7 of the 1996 Act, which was held to incorporate “defined legal relationship” within it.

12. Learned Senior Counsel further places before the court *Gujarat Composite Limited vs. A Infrastructure Limited and Ors.* reported at (2023) 7 SCC 193, which was relied on by the learned Trial Judge in the impugned order. It is shown from paragraph nos. 44 and 45 thereof that there was no doubt about the non-existence of arbitration agreement in relation to the entire subject matter of the said suit and when substantive reliefs claimed in the suits fell outside the arbitration clause in the original license agreement, the Supreme Court held that the dispute, emanating from a tripartite agreement not containing arbitration clause could not be referred to arbitration.

13. As opposed thereto, it is argued, in the present case, the substantive reliefs sought revolve around the lease agreement containing the arbitration clause.
14. Learned Senior Counsel appearing for the defendant/respondent no.1, in reply, cites *Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya and Anr.* reported at (2003) 5 SCC 531 and submits that as per the Supreme Court, unless the matter which is in dispute in a suit is entirely covered by the arbitration agreement, there cannot be any reference to arbitration. If part of the cause of action is amenable to the jurisdiction of arbitration, there cannot be a bifurcation of the suit in two parts and as such, the application under Section 8 of the 1996 Act should be dismissed.
15. Learned Senior Counsel next cites *Vinod Kumar Sachdeva (Dead) thr Lrs vs. Ashok Kumar Sachdeva and Ors.* reported at 2023 SCC Online SC 878 in support of his proposition that in the said case the Section 8 application was rejected since some of the parties to the suit were non-signatories to the arbitration agreement.

16. Lastly, learned Senior Counsel cites *Cox and Kings Limited vs. Sap India Private Limited and Anr.* reported at (2024) 4 SCC 1, where *Sukanya Holdings* (supra) was also referred to.
17. Upon a comprehensive perusal of the materials on record, we find that the disputes raised in the suit are entirely covered by the arbitration clause in the lease agreement between the plaintiff no. 1 and the defendant no. 1.
18. The plaintiff no. 2 being a director of the plaintiff no. 1, cannot be segregated from the plaintiff no. 1.
19. Throughout the plaint of the suit, we do not find a single sentence disclosing any cause of action worth the name against the defendant no. 2. The averments in the plaint which come nearest to such allegation is contained primarily in paragraph nos. 28 and 29 of the plaint, where it is stated that the defendant no. 1 cannot dispossess the plaintiff no. 1 and give possession to the defendant no. 2 without lawfully taking possession from the plaintiff no. 1. The defendant no. 1, it is alleged, is attempting to forcibly dispossess the plaintiff no. 1 from the suit premises and hand over possession to the defendant no. 2.

20. Thus, the entire allegation in the plaint is that the defendant no. 1 is seeking to disturb the possession of the plaintiffs and thereafter to hand over possession to the defendant no. 2. Hence, there is no positive assertion of any overt or covert act on the part of the defendant no. 2, to comprise a cause of action against the defendant no. 2 in the suit.
21. Reliefs 'A' and 'B' are entirely based on the subsistence of the agreements dated July 9, 2004 and March 3, 2005 executed between the plaintiff no. 1 and defendant no. 1. The July 9, 2024 agreement is thus the plinth of the suit and contains the arbitration clause. In the consequential reliefs, permanent injunction has been sought against all the defendants but, as discussed earlier, there is no disclosure of any cause of action against the defendant no. 2 at all. Hence, the omnibus relief of permanent injunction against all the defendants is not supported or borne out by the plaint pleadings.
22. Insofar as the defendant no. 2 is concerned, it would only a collateral beneficiary/victim of the outcome of the suit.
23. The defendant no. 2, having become a successful bidder in the subsequent tender floated by the defendant no. 1, does not have any direct connection with the dispute raised in the suit

but apparently has been impleaded primarily to negate the effect of the arbitration clause and to prevent a reference to arbitration. Even if, for argument's sake, it is taken that some relief has been sought against the defendant no. 2, the claim of the defendant no. 2, even as per the plaint pleadings, can only be through the defendant no. 1, the latter having floated a tender in which the defendant no. 2 participated and got a semblance of a right to have a lease deed executed. However, such semblance of a right is only an inchoate right at this stage and there is no right, title or interest *in praesenti* of the defendant no. 2 in the suit property even as per the plaint pleadings.

24. The purview of inclusion of non-signatories to arbitration agreement in arbitration matters has been broadened beyond recognition after *Sukanya Holdings* (supra), which has been cited by the respondent. In fact, in *Cox and Kings* (supra), which has been relied on by the plaintiff/respondents, the Supreme Court categorically observed that after *Sukanya Holdings* (supra), the law has undergone a sea change. It was observed that the restrictive interpretation given in *Sukanya Holdings* (supra) has suffered a definitive shift in position from

Chloro Controls India (P) Ltd. vs. Severn Trent Water Purification Inc. reported at (2013) 1 SCC 641 onwards.

25. Although the 'group company' theory, which was laid down in *Cox and Kings* (supra), is not applicable in the present case, the concept of primary and substantive relief is still a guiding factor in case of Section 8 references. Section 8(1) of the 1996 Act has now incorporated, after the 2015 amendment to the said Act, not only a party to the arbitration agreement but also any person claiming through or under him as an applicant. By necessary implication, the scope has been broadened to bring within the purview of arbitration not only the parties to the arbitration but also the people claiming through them.
26. We are conscious of the fact that such leeway has been given only in respect of the applicant and not to the other parties. However, as discussed above, by necessary implication and read as a whole, Section 8 provides that any dispute which is the subject of an arbitration agreement shall, if the parties to it or parties claiming through the original signatories to the agreement so wish, have to be referred to arbitration. The court does not have much of a choice left in that regard.

27. We must take note of the fact that the Legislature, in its wisdom, deliberately used the expression “a matter which is the subject of an arbitration agreement” in sub-section (1) of Section 8 instead of restricting the subject matter only to the parties to the arbitration agreement. Thus, the legal position as it stands is that if the dispute raised in a suit is covered by an arbitration agreement and a party to it or anybody claiming through it seeks a reference, as in the present case, the court is bound to refer the matter to arbitration.
28. The argument as to the original of the arbitration agreement not being produced is specious, since the suit itself is based on the lease agreement which contains the arbitration clause. If the existence of the said agreement is to be disbelieved, the premise of the plaint case also goes, thereby relegating the suit itself to the waste paper basket. As such, the plaintiffs do not have much of an option but to admit the existence of the lease agreement; rather, they rely on it and seek a declaration of its subsistence, and, as such, the subsistence arbitration clause contained therein as well. Thus, the technical aspect of Section 8(2) cannot be put on such a high pedestal that despite both parties relying on an arbitration clause contained

in a particular lease agreement, the subsistence of which has been claimed by the plaintiffs themselves in the suit, has to be discarded and a section 8 application on the basis of such document to be rejected.

29. Insofar as the scope of the suit is concerned, we have already recorded above that there is no substantive cause of action against the defendant no. 2 and the defendant no. 2's addition is a surplusage, which has been claimed by the defendant no. 2 itself in its written objection filed against the injunction application filed by the plaintiffs. Thus, this is case where there is no resistance on the part of the non-signatory party to the arbitration agreement to a reference to arbitration. Rather, the non-signatory/defendant no. 2 itself seeks to be expunged from the purview of the suit, which would further facilitate a reference to the arbitrator, since the thin thread on which the plaintiffs' resistance to a reference, that is, a non-signatory being a party to the suit, would also go. Hence, such tacit consent on the part of the defendant no. 2 to keep itself away from the foray of the disputes and thereby facilitate arbitration also has to be taken into account. Taking the spirit of Section 8 of the 1996 Act, read in conjunction with Section 5 thereof,

which restricts judicial intervention except as provided in the 1996 Act, we are, thus, of the opinion that the learned Trial Judge erred in law in rejecting the application under Section 8 of the 1996 Act filed by the appellant.

30. In view of the above observations and conclusions, FMA 167 of 2025 becomes redundant since, as we have held, the disputes raised in the suit ought to have been referred to arbitration by allowing the application under Section 8 of the 1996 Act.
31. The rest of the impugned order, whereby injunction was granted by the court, was without jurisdiction, since the trial court, in the first place, was duty-bound to refer the entire dispute to arbitration instead of itself entertaining the suit and deciding on the prayer for injunction made in connection therewith, and has to be set aside.
32. Accordingly, FMA 816 of 2025 and FMA 167 of 2025 are allowed, thereby setting aside Order no. 14 dated March 21, 2025 passed by the Civil Judge (Senior Division), First Court at Berhampore, District –Murshidabad in Title Suit no. 06 of 2024 as a whole and referring the dispute raised in the said suit to arbitration.

33. Consequentially, CAN 1 of 2025 is disposed of as well.

34. No order as to costs.

35. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)