

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA 804 of 2026
with
IA No.: CAN 1 of 2026**

**Jokhiram Baijnath
Vs.
Kailash Kumar and Brothers & Anr.**

For the Appellant : Mr. Siddhartha Banerjee, Advocate
Mr. Paritosh Sinha, Advocate
Ms. Soni Ojha, Advocate
Ms. Samprita B. Chatterjee, Advocate
Mr. Vidush Sinha, Advocate

For the Respondent No.1 : Mr. Sourjya Roy, Advocate

For the Respondent No.2 : Mr. Snehashis Sen, Advocate

Hearing & Judgment on : **July 17, 2026**

DEBANGSU BASAK, J.:-

1. Appeal is directed against Order No.2 dated June 15, 2026.
2. By the impugned order, learned Trial Judge granted an order of injunction restraining the appellant from disturbing the peaceful working of the business of the respondent no.1 and from creating any third party interest in the suit property in any manner whatsoever till July 15, 2026 on the condition that, the respondent no.1 shall approach the appropriate

authority for initiation of arbitration proceedings for appointment of an Arbitrator within a period of 90 days from the date of the order.

3. Learned Advocate appearing for the appellant submits that, the appellant enjoys a tenancy under the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata. He submits, on instructions, that the appellant is ready and willing to surrender the entire tenancy to the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata with effect from today, that is, July 17, 2026.
4. Learned Advocate appearing for the appellant submits that, there existed an agreement between the appellant and the respondent no.1. The subject-matter of the dispute, according to him, falls within the definition of a commercial dispute under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The petition under Section 9 of the Arbitration & Conciliation Act, 1996 was not filed before the Commercial Court. Therefore, according to him, the impugned order is a nullity.
5. Learned Advocate appearing for the appellant submits that, Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata is not a party to the arbitration agreement. Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata was made a party unnecessarily in the petition under Section 9 of the Act of 1996 in which the impugned order was passed.
6. Learned Advocate appearing for the appellant submits that, the relationship of landlord and the tenancy between the parties herein are

governed by the provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Therefore, the disputes between the appellant and the respondent no.1 are not arbitrable, notwithstanding the existence of the arbitration agreement in the agreement between the appellant and the respondent no.1.

7. Learned Advocate appearing for the respondent no.1 seeks direction for filing affidavits. He submits that, the respondent no.1 applied to be added as a party in the appeal preferred by the appellant against an order passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
8. Learned Advocate appearing for the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata submits that, his client gave unencumbered possession of the property in question to the appellant. Therefore, the appellant is obliged to make over unencumbered possession of the property in question to his client.
9. Learned Advocate appearing for the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata submits that, the appellant suffered a decree for eviction and mesne profit in a proceeding under the Public Premises (Eviction and Unauthorised Occupants) Act, 1971. He submits that, any person claiming through the appellant is also bound by such decree of eviction.
10. Materials made available on record establish that, the appellant was let out a land admeasuring an area of 12379.88 sq. mtr.. at Hide Road, Kolkata

for a period of 30 years by the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata under an instrument dated October 4, 2001.

11. Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in which a decree for eviction and mesne profit was passed on August 5, 2022. Such decree for eviction and mesne profit was as against the appellant.
12. Appellant preferred a statutory appeal therefrom. Such appeal is pending. In such appeal, the respondent no.1 applied for addition of party.
13. Learned Advocate appearing for the appellant submits, on instructions, that, the appellant will limit the appeal preferred against the order dated August 5, 2022 to the extent that it relates to the decree for mesne profits. In other words, the appellant will retain the right to continue with such appeal for the extent of mesne profit.
14. Respondent no.1 herein filed an application being Misc Case (Arbitration) 44 of 2026 in which the impugned order was passed. Impugned order overlooks the factual matrix as noted above. At best, the respondent no.1 can proceed against the appellant with regard to the property in question. However, in view of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the order of eviction dated August 5, 2022 passed by the Estate Officer under the Act of 1971, whether or not, the disputes between the appellant and the respondent no.1 is

arbitrable is debatable. We, however, do not enter into such controversy in this appeal.

15. The interim order as it stands today affects the right, title and interest of the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata which the Board enjoys in terms of the order of eviction dated August 5, 2022 passed in the proceedings under the Act of 1971. So-called disputes between the appellant and the respondent no.1 cannot impede the Board from enjoying the usufructs of the order of eviction passed in the proceedings under the Act of 1971.
16. Since the factual matrix and the relationship between the parties as noted above are admitted, question of permitting the respondent no.1 to use an affidavit in the present appeal does not arise. We make no comments with regard to the application for addition of party that the respondent no.1 made in the pending statutory appeal directed against the order of eviction and mesne profit dated August 5, 2022 passed under the Act of 1971.
17. The disputes between the appellant and the respondent no.1 relates to an immovable property which is used for commercial purpose. Appellant took the property from the Board of Major Port Authority, Syama Prasad Mookerjee Port, Kolkata for commercial exploitation. It gave a portion of the property to the respondent no.1 on licence for the purpose of utilizing as a storage space.
18. The agreement that was entered into between the appellant and the respondent no.1 is dated April 2, 2023. In Paragraph 3 of the application

under Section 9 of the Act of 1996, the respondent no.1 stated that, they are utilizing the subject property for the purpose of storing tea as a 'storage space'. In Paragraph 4 of the application under Section 9 of the Act of 1996, the respondent no.1 stated that, it was using the property in question for the purpose of storing tea, goods, materials and articles which the respondent no.1 deals in its usual course of business. User the property in question presently and exclusively for commercial purpose by the respondent no.1 is, therefore, established.

19. In such circumstances, the disputes between the appellant and the respondent no.1 falls within the meaning of Section 2(1)(c)(vii) of the Act of 2015. The proceedings under Section 9 of the Act, 1996 initiated by the respondent no.1 was not before the Commercial Court under the Act of 2015. Consequently, the Court which passed the impugned order did not possess subject-matter jurisdiction to entertain the petition under Section 9 of the Act of 1996. The impugned order, therefore, is a nullity.
20. In view of the discussions above, the impugned order dated June 15, 2026 is set aside.
21. **FMA 804 of 2026** and **IA No.: CAN 1 of 2026** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)