

Smt. Shanti Dey @ Santi Dey Vs Sri Suvodeep Saha**1196 of 2016 With C A N 10852 of 2016**

Court: CALCUTTA HIGH COURT**Date of Decision:** Jan. 2, 2018**Acts Referred:**

[Arbitration and Conciliation Act, 1996](#), [Section 11](#), [Section 9](#) - Appointment of arbitrators - Interim measures, etc., by Court

Hon'ble Judges: Patherya, Rajasekhar Mantha**Bench:** Division Bench**Advocate:** Sukanta Chakraborty, Anindya Halder

Judgement

1. This appeal has been filed from the order dated 16th August, 2016. By the said order the application filed under Section 9 of the 1996 Act filed

by the appellant was dismissed and the interim order passed was vacated. The application filed under Section 9 of the 1996 Act was filed in April,

2014 and since the interim order was passed it was continued. It is only by virtue of the order dated 16th August, 2016 that this interim measure

and the order of injunction passed was vacated. Section 11 of the 1996 Act was filed on 24th March, 2016 and is pending.

2. The only reason for vacating the order of temporary injunction by the Court below is that in case the injunction is granted or continued

commercial transaction will be seriously hampered and the project will be interrupted which will escalate the project cost. Another reason for

having passing the order dated 16th August, 2016, as the court below relied on the balance of convenience and inconvenience and according to

the Court below the appellant would be adequately compensated by an order of damage or loss and this can be measured by money. This reason

cannot be sustained prima facie at the moment as the partnership firm was constituted by two persons namely the deceased husband of the

appellant and Mr. Suvodeep Saha. An arbitration clause was incorporated in the partnership agreement, and all that the widow was seeking to do

was to ensure the assets of the partnership firm without being frittered away and on being satisfied with the submission of the appellant the Court

below passed the order of injunction. In vacating the order of temporary injunction the Court below allowed the surviving partner to take decisions

unilaterally which will enure to his benefit especially when the business of the partnership firm is to develop the real-estate and/or properties. This

will be against the interest of the appellant.

3. In spite of service of notice received by the respondent as will appear from the affidavit of service the order dated 16th August, 2016 be stayed

as an interim measure for a period of six weeks. In the meantime as all documents before the court below has been annexed, except the written

objection filed by the respondent, let the said written objection be also included in the paper book and the appeal be heard within a week from the

filing of such paper book as mentioned above.

4. It is in view of the facts before us that the respondent is restrained from transferring any portion of the properties, as it appears before the

Schedules annexed to the application filed under Section 9 of the 1996 Act. The said Schedules have been set out hereinbelow for ready reference

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SCHEDULE ""A"" PART-1

ALL THAT piece or parcel of land measuring about 3 (three) cottah more or less situated at Mouza - Krishnapur, J.L. No. - 17, Re.Sa. No. -

180, Touzi No. - 228, and 229 comprising to C.S. Khatian No. - 524, R.S. Khatian No. - 360, C.S. Dag No. - 5025, R.S. Dag No. - 3034,

being plot No. - AG-49, Municipal Holding No. - RGM/137/111, Block - D which is butted and bounded by :-

On the North : R.S. Dag No. - 3034 & 6ft. wide road

On the South : 16ft. wide road

On the East : 8ft. wide road

On the West : Part of R.S. Dag No. - 3034

SCHEDULE ""A"" PART - II

ALL THAT piece of parcel of Land measuring about 2 (two) cottah 41 Sq. ft. more or less situated at Mouza - Krishnapur, J.L. No. - 17, Re.Sa.

No. - 180, Touzi No. - 228, and 229 comprising to C.S. Khatian No. - 524, R.S. Khatian No. - 360, C.S. Dag No. - 5025, R.S. Dag No. -

3034, being plot No. - 49/1 Municipal Holding No. - RGM/25/1635 under police Station Rajarhat- Gopalpur Municipality which is butted and

bounded by :-

On the North : 6ft. wide road

On the South : land of Sandhya Sen

On the East : 8ft. wide road

On the West : land of Anil Kumar Das

SCHEDULE ""B

ALL THAT piece of parcel of land masuring about 3 (three) cottah 12 (twelve) chittak more or less situated at Mouza - Krishnapur, J.L. No. -

17, Re.Sa. No. - 180, Touzi No. - 228, and 229 comprising to R.S. Khatian No. - 49, C.S. Dag No. - 3707, R.S. Dag No. - 2289, under

Police Station Baguiati, District North 24 Parganas within the local limits of Rajarhat Gopalpur Municipality, which is butted and bounded by :-

On the North : C.S. Dag No. - 3706 & 10 ft. wide road

On the South : C.S. Dag No. - 3708

On the East : C.S. Dag No. - 3702 & 7ft. wide road

On the West : C.S. Dag No. - 3702 & 10ft. wide road

5. In respect of the said Schedules set out hereinabove the respondent is restrained not only from transferring any portion of the Schedule

properties except without leave of this Court so also from operating any bank account in the name of the partnership firm except in the usual

course of business. The respondent has taken the risk to not appear before us in spite of being served as will appear from the Track Report and

the affidavit of service filed. Therefore, this application need not be pursued and CAN 10852 of 2016 is disposed of.

6. The appeal for hearing be listed after five weeks.

7. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.