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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 11.02.2026***
Judgment pronounced on: 26.02.2026

\+ ARB. A. (COMM.) 71/2025 & I.A. 32778/2025 (Stay)

KHURANA EDUCATIONAL SOCIETY (REGD.)

.....Petitioner

Through: Ms. Diya Kapur, Senior Advocate along with Mr. Mayank Bhargava, Ms. Aarushi Singh, Mr. Parth Khurana, Mr. Rajdeep Saraf, Mr. Aditya Ladha and Mr. Naibedya Dash, Advocates.

versus

SMT. SHASHI BALA .....Respondent

Through: Ms. Shriya Maini, Mr. Rajive Maini, Mr. Neeshu Chandpuriya and Mr. Yash Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal under Section 37(2)(b) of the **Arbitration and Conciliation Act, 1996**[1] has been preferred by the Appellant-Society assailing the **Order dated 16.09.2025**[2] passed by the learned Sole Arbitrator in arbitral proceedings titled "*Smt. Shashi Bala v. Khurana Educational Society (Regd.)*", whereby certain interim

[1] A&C Act
[2] Impugned Order

measures under Section 17 of the A&C Act came to be granted in favour of the Respondent-Claimant, including directions for deposit of usage charges and ancillary protective reliefs.

BRIEF FACTS:

2. Shorn of unnecessary details, the facts germane to the institution of the present Appeal are as follows:

I. The Respondent-Claimant asserts ownership over **land bearing Khasra No. 13/7 admeasuring approximately 4840 sq. yds. situated in Village Goyla Khurd, New Delhi**[3], on the basis of a registered sale deed executed in her favour. It is averred that a registered lease deed dated 02.05.2000 came to be executed between the parties whereby the Subject Property was let out to the Appellant-Society at a monthly rent of ₹1,000/-, the property being utilized by the Appellant for purposes connected with the functioning of the educational institution run by it.

II. Subsequently, disputes arose *inter se* the parties concerning the validity of termination of the lease, the nature of possession of the Appellant after issuance of Termination Notice dated 09.04.2018, and the entitlement of the Respondent to damages or *mesne* profits for continued occupation of the Subject Property.

III. The Respondent thereafter instituted a commercial suit before this Court, being CS(COMM) 10/2023, seeking possession and other allied reliefs. By Order dated 14.09.2023, the said suit was referred to arbitration pursuant to an application filed by the Appellant herein under Section 8 of the A&C Act, read with

[3] Subject Property

Order VII Rule 11 and Section 151 of the **Code of Civil Procedure, 1908**[4]. Consequent thereto, the learned Arbitrator entered upon reference.

IV. During the arbitral proceedings, the Respondent filed an Application under Section 17 of the A&C Act seeking interim measures, *inter alia*, for payment of usage charges/*mesne* profits, permission for inspection of the Subject Property, and restraint against the creation of third-party rights.

V. The Appellant contested the said Section 17 Application by placing reliance upon its Statement of Defence, disputing the Respondent's entitlement to ownership and asserting rights arising out of alleged family arrangements, subrogation pursuant to proceedings before the Debt Recovery Tribunal, and the alleged invalidity of the termination notice.

VI. Upon consideration of the rival pleadings and material placed on record, the learned Arbitrator, by the Impugned Order, directed the Appellant to deposit usage charges at the rate of ₹3,00,000/- per month with effect from 15.10.2018 during the pendency of the arbitral proceedings, with the amount to be secured in a joint interest-bearing arrangement, and further permitted monthly inspection of the Subject Property upon notice while restraining the creation of any third-party interests therein. The learned Arbitrator clarified that the issues relating to title, validity of termination, and final determination of *mesne* profits would be adjudicated upon evidence at the appropriate stage of the arbitral proceedings.

[4] CPC

3. Aggrieved by the aforesaid directions, the Appellant has preferred the present Appeal under Section 37(2)(b) of the A&C Act, contending that the Impugned Order travels beyond the permissible contours of interim relief, virtually grants final relief without trial, and fixes occupation charges arbitrarily without an evidentiary basis; it is in these circumstances that the legality and propriety of the interim measures granted by the learned Arbitrator fall for consideration before this Court.

CONTENTIONS ON BEHALF OF THE APPELLANT:

4. Learned senior counsel appearing for the Appellant would contend that the Impugned Order, though styled as an interim measure under Section 17 of the A&C Act, in substance amounts to a final adjudication of the principal disputes between the parties. It would be urged that questions relating to the validity of termination of the lease deed dated 02.05.2000, the alleged unauthorized possession of the Appellant, and the determination of *mesne* profits are issues which are intrinsically triable and require adjudication upon evidence; however, the learned Arbitrator has prematurely fixed a substantial monthly liability, thereby pre-empting the final outcome of the arbitral proceedings.

5. It would further be contended that the learned Arbitrator failed to appreciate the Appellant's case arising out of the family settlement and the proceedings before the learned Debt Recovery Tribunal. According to the Appellant, Group 'B' members had redeemed the mortgage in favour of Punjab National Bank by making payment of ₹1,01,00,000/- and stood subrogated to the rights of the mortgagee under Sections 91 and 92 of the Transfer of Property Act, 1882. In the

absence of any challenge to such subrogation or any claim for redemption by the Respondent, it would be argued that the Respondent could not assert exclusive proprietary rights over the Subject Property solely on the basis of the lease deed, and the learned Arbitrator erred in proceeding on a contrary *prima facie* premise.

6. Learned senior counsel for the Appellant would also contend that, even assuming that some interim arrangement was warranted, the learned Arbitrator could at best have directed the deposit of the last admitted rent or an amount analogous to relief under Order XXXIX Rule 10 of the CPC. Instead, the learned Arbitrator proceeded to determine an alleged market rental value of ₹3,00,000/- per month without any trial, expert assessment, cross-examination, or opportunity to lead evidence, and in the absence of any admission regarding valid termination or unauthorized occupation.

7. It would further be urged that the reliance placed by the learned Arbitrator on lease deeds of the years 2021 and 2025 for determining usage charges retrospectively from October 2018 is wholly misconceived and arbitrary. According to the Appellant, such reliance disregards the substantial temporal gap and fluctuations in rental values over the years. It would be submitted that the exemplars relied upon were neither comparable in nature nor subjected to evidentiary scrutiny, and that other lease instances reflecting significantly lower rentals were ignored.

8. Learned senior counsel would additionally contend that the Impugned Order fails to record any cogent finding with respect to the settled principles governing the grant of interim relief, namely the existence of a *prima facie* case, balance of convenience, and

irreparable injury. The direction to deposit substantial sums with retrospective effect from 15.10.2018 is stated to be an arbitrary exercise of jurisdiction, causing grave financial prejudice to the Appellant, which is a non-profit educational society engaged in imparting education.

9. It would also be argued that the learned Arbitrator has overlooked that the disputes regarding ownership, family settlement, and alleged subrogation are fundamental issues going to the root of the Respondent's entitlement, and until such issues are finally adjudicated, fixation of market-based usage charges is legally unsustainable. The Appellant would thus submit that the Impugned Order travels beyond the permissible contours of interim jurisdiction under Section 17 of the A&C Act and warrants interference under Section 37 by this Court.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

10. ***Per contra***, learned counsel appearing for the Respondent would contend that the present Appeal is devoid of merit and is nothing but an attempt to re-agitate disputed questions of fact under the guise of appellate scrutiny under Section 37 of the A&C Act. It would be submitted that the learned Arbitrator has exercised jurisdiction within the four corners of Section 17 of the A&C Act and has granted a balanced and protective interim arrangement without adjudicating upon the final rights of the parties.

11. Learned counsel would contend that the Respondent is the lawful owner of the Subject Property by virtue of a registered sale deed and that the existence of the lease deed dated 02.05.2000, as well as the service of termination notice dated 09.04.2018, are not in

dispute. Despite the termination of the lease, the Appellant has continued to occupy and utilise the land for its institutional purposes without paying any reasonable usage charges, thereby causing continuing financial prejudice to the Respondent. It would be urged that the balance of convenience squarely lies in favour of the Respondent, as continued deprivation of possession without adequate compensation cannot be countenanced during the pendency of the arbitral proceedings.

12. It would further be contended that the Appellant's reliance upon alleged family settlement, subrogation, or proceedings before the Debt Recovery Tribunal pertains to disputed questions of title which are yet to be adjudicated upon evidence in arbitration. The learned Arbitrator has consciously refrained from finally deciding such issues and has only fashioned an interim arrangement to protect the subject matter of the dispute; therefore, the Appellant cannot seek interference under Section 37 of the A&C Act by inviting this Court to undertake a re-appreciation of those contentious issues.

13. Learned counsel for the Respondent would also contend that the fixation of interim usage charges at ₹3,00,000/- per month is neither arbitrary nor excessive, particularly when the Respondent had claimed higher amounts and had placed on record registered lease deeds of comparable properties in the same vicinity. It would be urged that the learned Arbitrator, after considering the surrounding circumstances and the interim nature of the proceedings, consciously reduced the amount claimed and directed that the sums be secured in a joint interest-bearing arrangement, thereby safeguarding the interests of both parties.

14. It would further be submitted that the Appellant cannot avoid its liability to pay reasonable occupation charges merely by disputing the landlord-tenant relationship or by raising pleas of financial hardship. It would be contended that a person continuing in possession after termination of tenancy cannot claim equitable indulgence while enjoying the property without payment of fair compensation. The Respondent would also submit that the nature of the Appellant as an educational institution does not absolve it of contractual or equitable obligations arising from continued use of another's property.

15. Learned counsel would finally contend that the Impugned Order reflects due consideration of the material on record and strikes a balance between the competing claims by securing the amount rather than directing immediate payment to the Respondent. The directions permitting inspection of the Subject Property and restraining creation of third-party interests are stated to be standard protective measures intended to preserve the property during the pendency of arbitration. It would thus be urged that no case for interference within the limited scope of Section 37 of the A&C Act is made out and the present Appeal deserves to be dismissed.

ANALYSIS:

16. This Court has heard learned counsel for the parties at considerable length and, with their assistance, carefully perused the record of the present Appeal, including the pleadings and the Impugned Order passed by the learned Arbitrator.

17. This Court considers it apposite, at the outset, to delineate the scope and ambit of appellate jurisdiction under Section 37 of the A&C Act, particularly in the context of interference with interlocutory

orders rendered by an Arbitral Tribunal under Section 17 of the A&C Act. The contours of such jurisdiction are necessarily circumscribed, for the legislative scheme underlying the A&C Act evinces a clear intent to accord primacy to the autonomy of the arbitral process and to minimise judicial intervention, save in narrowly tailored situations expressly contemplated by statute.

18. A plain reading of Section 37 of the A&C Act reveals that the provision merely enumerates the categories of orders that are amenable to appellate scrutiny; it does not, in express terms, define the breadth or intensity of such scrutiny. Equally, the statute is conspicuously silent as to the parameters governing the Court's exercise of appellate power while examining an order passed by the Arbitral Tribunal under Section 17 of the A&C Act. This legislative silence is neither accidental nor inconsequential; rather, it signifies that the appellate jurisdiction is intended to be supervisory and corrective in nature, and not an avenue for rehearing the matter on merits or substituting the discretionary determination of the Arbitral Tribunal with that of the Court. For the sake of completeness, Section 37 of the A&C Act is reproduced hereunder:

> "**Section 37. Appealable orders**. — (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
> [(a) refusing to refer the parties to arbitration under section 8;
> (b) granting or refusing to grant any measure under section 9;
> (c) setting aside or refusing to set aside an arbitral award under section 34].
> (2) Appeal shall also lie to a court from an order of the arbitral tribunal—
> (a) accepting the plea referred to in sub-section (2) or subsection (3) of section 16; or
> (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

(emphasis supplied)

19. At this juncture, this Court finds it apposite to delineate the contours and ambit of the jurisdiction exercisable under Section 37 of the A&C Act, as expounded by this Court in ***Indo Spirits v. Pernod Ricard India Pvt Ltd and Ors*** [5], which reads as follows:

"**16.** At the outset, this Court notes that it is fully conscious of the limited scope of appellate jurisdiction under Section 37(2)(b) of the A&C Act. The legislative intent underlying Section 5 of the A&C Act mandates minimal judicial interference in arbitral proceedings.
17. A Coordinate Bench of this Court in ***NHAI v. HK Toll Road (P) Ltd.*** has reiterated that an appellate court does not ordinarily interfere with discretionary orders passed by an Arbitral Tribunal. Interference is justified only where such discretion has been exercised arbitrarily, perversely, or in disregard of settled principles governing the grant or refusal of interim relief. The appellate court is not expected to substitute its own view merely because another view is possible; rather, it must confine itself to examining whether the Arbitral Tribunal adhered to settled legal principles. The relevant portion of the said judgment reads as follows:

"**56.** A perusal of the aforesaid judgments show that the appellate court while exercising powers/jurisdiction under Section 37 of the 1996 Act and more particularly under Section 37(2)(*b*) of the 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under Section 5 of the 1996 Act. Section 5 of the 1996 Act clearly reflects the legislative intent to minmize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under the 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at minimal court involvement, thereby to uphold the autonomy and efficiency of the arbitration process. (Reference: paras 64, 66, 68-70 of *Dinesh Gupta case*[13]).
57. The appellate court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole

[5] 2026:DHC:1413

purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The appellate court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The appellate court is only required to see the whether the AT has adhered to the settled principles of law rather than reassessing the merits of the AT's reasoning.

58. A coordinate Bench of this Court in ***Tahal Consulting Engineers India (P) Ltd***. [2023 SCC OnLine Del 2069] *case* has observed as under: (SCC OnLine Del paras 36 and 38)

> "***36.*** L & T Finance lays emphasis on the need of the appellate court to bear in mind the basic and foundational principles of the Act and that being of judicial intervention being kept at the minimal. It also correctly finds that the power conferred by Section 37(2)(*b*) is not to be understood as being at par with the appellate jurisdiction which may otherwise be exercised by courts in exercise of their ordinary civil jurisdiction. This clearly flows from the foundational construct of the Act which proscribes intervention by courts in the arbitral process being kept at bay except in situations clearly contemplated under the Act or where the orders passed by the Arbitral Tribunal may be found to suffer from an evident perversity or patent illegality.
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> ***38.*** It would thus appear to be well settled that the powers under Section 37(2)(*b*) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order of the Arbitral Tribunal would thus be liable to be tested on the limited grounds of perversity, arbitrariness and a manifest illegality only."

59. To sum up, it is clear that in view of the limited judicial interference, the appellate court has to exercise its power only if the arbitral order suffers from perversity,

arbitrariness and a manifest illegality."

18. A similar exposition of law is found in ***World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn***, wherein it has been held that the scope of interference under Section 37 of the A&C Act against orders passed under Section 17 is extremely limited. The Co-ordinate Bench emphasized that Interlocutory Orders of an Arbitral Tribunal are inherently tentative and protective in nature, subject to modification at the stage of final award. Judicial restraint operates with even greater vigour at the interlocutory stage, as unwarranted interference may impede the arbitral process itself. The relevant portion of the said judgment reads as follows:

> "**66.** The scope of interference, in appeal, against orders passed by arbitrators on applications under Section 17 of the 1996 Act is limited. This Court has already opined in ***Dinesh Gupta* v. *Anand Gupta*, 2020 SCC OnLine Del 2099*, Augmont Gold (P) Ltd.* v. *One97 Communication Ltd.*, (2021) 4 HCC (Del) 642]** and ***Sanjay Arora* v. *Rajan Chadha*, (2021) 3 HCC (Del) 654,** that the restraints which apply on the court while examining a challenge to a final award under Section 34 equally apply to a challenge to an interlocutory order under Section 37(*ii*)(*b*). In either case, the court has to be alive to the fact that, by its very nature, the 1996 Act frowns upon interference, by courts, with the arbitral process or decisions taken by the arbitrator. This restraint, if anything, operates more strictly at an interlocutory stage than at the final stage, as interference with interlocutory orders could interference with the arbitral process while it is ongoing, which may frustrate, or impede, the arbitral proceedings.
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> **67.** Views expressed by arbitrators while deciding applications under Section 17 are interlocutory views. They are not final expressions of opinion on the merits of the case between the parties. They are always subject to modification or review at the stage of final award. They do not, therefore, in most cases, irreparably prejudice either party to the arbitration. Section 17 like Section 9 is intended to be a protective measure, to preserve the sanctity of the arbitral process. The pre-eminent consideration, which should weigh with the arbitrator while examining a Section 17 application, is the necessity to preserve the arbitral process and ensure that the parties before it are placed on an equitable scale. The interlocutory nature of the order passed under Section 17, therefore, must necessarily inform the court seized with an appeal against such a decision, under Section 37. Additionally, the considerations which apply to Section 34

would also apply to Section 37(*ii*)(*b*)."

(emphasis supplied)

20. To augment the aforesaid position, it is apposite to refer to the decision of this Co-Ordinate Bench of this Court in ***Dinesh Gupta and Others v. Anand Gupta and Others***[6], wherein the scope of appellate interference under the A&C Act has been succinctly delineated as follows:

> "**71.** Section 37 is, in a sense, a somewhat peculiar provision as, against the decision of the arbitrator, it provides for a first appeal, as well as a second appeal, to the High Court. Sub-section (1) provides for an appeal, to the High Court, from the decision of the Section 34 Court, before which the final award has, in the first instance, been tested. Sub -section (2), on the other hand, provides for a first appeal, against interlocutory orders of the arbitral tribunal under Section 16 or Section 17. There is, necessarily, a qualitative difference between these two challenges, though both would lie to the High Court. The challenge under Section 37(1), which is directed against a final award of the arbitrator/arbitral tribunal, is akin to a second appeal, as was observed by this Court in ***M.T.N.L. v. Fujitshu India Pvt. Ltd***.. The challenge under Section 37(2), on the other hand, is directed against the decision of the arbitral tribunal and has therefore, in my opinion, necessarily to conform to the discipline enforced by Section 5. It would, therefore, be improper for a Court to treat an appeal, under Section 37(2) of the 1996 Act, as akin to an appeal under the CPC, or as understood in ordinary - or extraordinary - civil law. An appeal against an order by an arbitrator, or by an arbitral tribunal, is an appeal sui generis, and interference, by the Court, in such appeals, has to be necessarily cautious and circumspect.
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> **72.** This position would stand especially underscored where the order, under challenge, is discretionary in nature. Orders of arbitrators, or Arbitral Tribunals, which are amenable to appeal, under Section 37 (2), have, statutorily, to have been issued either under Section 16(2) or (3) or under Section 17. Section 16(2) and 16(3), essentially, deal with rulings on the jurisdiction and authority of the arbitral tribunal, to arbitrate. Any order, passed under either, or both, of these provisions has, therefore, necessarily to partake of a purely legal character. Such an order would not, ordinarily, be discretionary in nature."
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> ***(emphasis added)***

21. Having outlined the limited scope of interference under Section

[6] 2020 SCC OnLine Del 2099

37(2)(b) of the A&C Act, this Court also deems it apposite to briefly advert to the nature and ambit of the jurisdiction exercisable by an Arbitral Tribunal under Section 17 of the A&C Act. The contours of such power, being interlocutory and equitable in character, warrant consideration in principle before this Court proceeds to examine the rival submissions on merits. The law in this regard has been succinctly enunciated by the Co-Ordinate Bench in ***Dinesh Gupta and Others*** *(supra)*, wherein the scope and ambit of the jurisdiction exercisable under Section 17 of the A&C Act were examined in detail.

22. The said judgment clarifies that the power of an Arbitral Tribunal to grant interim measures under Section 17(1) is analogous and co-extensive with that of a civil court while exercising jurisdiction under Section 9 of the A&C Act, and consequently the well-established principles governing grant of interim injunctions, including those embodied in Order XXXIX of the CPC, would equally guide the exercise of such power. The relevant observations as made in ***Dinesh Gupta and Others*** *(supra)* are reproduced hereunder:

> "Section 17(1), and applicability of Order XXXIX, CPC, thereto
> **73.** As against this, orders which are appealable under Section 37(2)(b) are orders granting, or refusing to grant, interim measures under Section 17. Section 17(1), for its part, reads thus:
> "**17. Interim measures ordered by arbitral tribunal**.-
> (1) A party may, during the arbitral proceedings, apply to the arbitral tribunal – (i) for the appointment of a guardian for minor or person of unsound mind for the purposes of arbitral proceedings; or
> (ii) for an interim measure of protection in respect of any of the following matters, namely:—
> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
> (b) securing the amount in dispute in the arbitration;
> (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may

> arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
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> (d) interim injunction or the appointment of a receiver;
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> (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,
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> and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it."

74. The concluding caveat, in Section 17(1), makes it abundantly clear that the power of an arbitrator, to grant interim measures, under Section 17(1), is analogous and equivalent to the power of a Court, to pass such orders. Section 9 of the 1996 Act grants co-equal jurisdiction, worded in identical terms, on the Court, to pass interim orders, concluding with a parallel caveat, to the effect that "the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it".

75. The scope and ambit of Section 9, especially in the light of this concluding caveat, was examined by the Supreme Court in ***Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation*** and ***Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.***. In Arvind Constructions Co. (P) Ltd.29, it was held thus (in para 15 of the report):

> "The argument that the power under Section 9 of the Act is independent of the Specific Relief Act or that the restrictions placed by the Specific Relief Act cannot control the exercise of power under Section 9 of the Act cannot prima facie be accepted. The reliance placed on Firm Ashok Traders v. Gurumukh Das Saluja, (2004) 3 SCC 155 in that behalf does not also help much, since this Court in that case did not answer that question finally but prima facie felt that the objection based on Section 69(3) of the Partnership Act may not stand in the way of a party to an arbitration agreement moving the court under Section 9 of the Act. The power under Section 9 is conferred on the District Court. No special procedure is prescribed by the Act in that behalf. It is also clarified that the court entertaining an application under Section 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it. Prima facie, it appears that the general rules that governed the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act.

> There is also the principle that when a power is conferred under a special statute and it is conferred on an ordinary court of the land, without laying down any special condition for exercise of that power, the general rules of procedure of that court would apply. The Act does not prima facie purport to keep out the provisions of the Specific Relief Act from consideration. … we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well-recognized principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a Receiver."
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> *(Emphasis supplied)*
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> **76.** In ***Adhunik Steels Ltd., P.K. Balasubramanyan***, J. (who had also authored Arvind Constructions Co. (P) Ltd.), after a somewhat longer and more detailed discussion, reiterated the position that "it would not be correct to say that the power under Section 9 of the Act is totally independent of the well known principles governing the grant of interim injunction that generally governed the courts in this connection".
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> **77.** The principles governing Order XXXIX of the CPC have, therefore, also to guide the Court, while granting interim protection under Section 9(1), or the arbitrator, while granting such protection under Section 17(1), of the 1996 Act."
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> ***(emphasis added)***

23. The scope of Section 17 of the A&C Act has also been discussed by the Co-Ordinate Bench of this Court in ***Indian Railway Catering & Tourism Corpn. Ltd. v. Sujata Hotel (P) Ltd.***[7], which reads as under:

> "**21.** The aforesaid provision confers powers akin to those vested upon the Court by virtue of Section 9 except that in case of the latter, the Court stands vested with the authority to direct interim measures being taken before, during or for that matter even after the Arbitral proceedings have come to a close and culminated in the making of an award. As would be evident from a reading of Section 17, the interim measures are concerned with the preservation of goods which may form the subject matter of arbitration, securing any amounts which may be in dispute, the detention, preservation or inspection of property, the appointment of a receiver and directing such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient.

[7] 2022 SCC OnLine Del 4478

> **22.** As would be evident from the decisions on which reliance was placed by the claimant itself, the power conferred by Section 17 upon the Arbitral Tribunal is essentially akin to the powers vesting in a court to grant an interim prohibitory or mandatory injunction. Section 17 in any case cannot be construed as either conferring a power on the Arbitral Tribunal to either render an interim award or to grant one of the final reliefs which may be sought by a claimant. One of the principal considerations which courts and tribunals weigh in mind while considering the question of grant of interim protection, is to be wary of passing orders which amount to the grant of final reliefs that may be claimed by parties. However, and as would be manifest from the aforesaid recital of facts as well as the direction which was ultimately framed by the Arbitral Tribunal in the present case, it is exactly that basic and underlying principle governing the grant of interim injunction which has been evidently ignored and violated by the Arbitral Tribunal."
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> ***(emphasis added)***

24. At this stage, before proceeding further, this Court considers it apposite to extract the relevant portions of the Impugned Order passed by the learned Arbitrator. The said extracts are reproduced hereinbelow:

> "**9.** I have heard the Ld. Counsel for both the parties on this application. Though substantially the claimant counsel had addressed the arguments on this application but on one occasion, the authorized representative of the claimant requested for personal hearings which was granted to him. Since the respondent choose not to file the reply to this application but desired the tribunal to treat the statement of defence as a reply to this application therefore, it has become necessary first to go through the statement of claim so that the statement of defence and rejoinder can be appreciated in the light of the statement of claim.
> **10.** Needless to say that what is before me an application U/s 17 of the Act and therefore I have to focus on this application alone at this juncture and find out if Interim Relief as claimed by the claimant can be given or not.
> **11.** It is emphatically urged the Ld. Counsel for the respondent that the claimant is seeking final relief at the interim stage which cannot be granted as that will tantamount to deciding the case finally. It is urged by him that it is settled principle that while granting the interim injunction, which is in the form of final prayer should only be granted after adjudication of the dispute and after appraisal of the evidence and since no evidence has yet been lead by the parties, and therefore according to the Ld. Counsel for the respondent the question of granting interim relief which is nothing

but a final relief can-not be granted. In this regard he has referred to a judgment rendered by Apex Court in *"Arvind Construction Pvt. Ltd. Vs. Kalinga"* and also an another judgment *"Adhunik Steel Ltd. Vs. Orissa Manganese & Minerals Pvt.Ltd.*" where their lordship where dealing of the Section 9 of the Act held that "It would not be correct to say that the power U/s 9 of the Act is totally independent of the well known principles governing the grants of an interim injunction that generally governed the courts in this connection". On the other hand the Ld. Counsel for the claimant urged that the claimant while claiming usage charges and occupation charges has not claimed the possession of the property and therefore it cannot said that the interim relief as claimed by the claimant is of alike nature as claimed in the statement of the claim.

12. As I observed above that the Tribunal will not adjudicate on the main pleas taken by the claimant and that of the respondent where the respondent has alleged that the property in question is owned by the society in terms of settlement deed, which settlement deed has been empathically denied by the claimant who indeed have claimed ownership on the basis of registered sale deed executed in her favour. The claimant counsel also urged that the respondent did not file any Declaration Suit for cancellation of the registered Sale Deed executed in favour of the claimant but on the other hand the respondent's society while moving the different authorities viz. Income Tax Authorities, Central Board of Secondary Education and also in its balance sheet after execution of the Lease Agreement admitted the existence of the Lease Deed and their liability to pay monthly rent as stipulated in the Lease Deed. It is also urged by the Ld. Counsel for the claimant, that the respondent's representatives after making payment to the bank, a demand notice dated 10.12.2015 was given by the respondent's representative to the claimant to pay this amount and redeem this property. What else is urged before me that the respondent's representative and their family members filed Four Writ Petitions bearing Writ Petition No.10068/2016, 10069/2016, 10070/2016 and 10072/2016) before the Hon'ble Delhi High Court, where the respondent's representatives and their wives categorically admitted that the property in question belonged to the other family members i.e. the claimant and not to them. They also pleaded that they are the Bhumidars of the land and other family members were also Bhumidars. My attention has also been drawn to the family settlement dated 30.01.2025 executed between Smt. Bimla Khurana, Saroj Khurana, Nisha Khurana, Santosh Khurana, Ashwani Kumar Khurana and Tilak Raj Khurana, where they stated that all the six properties as detailed in the settlement deed were their personal and self acquired properties which they had purchased from their own funds, savings and earning and that all the properties stand mutated in the name of its respective owners, whereas while filing the statement of defence they have taken a

contrary stand than what has been mentioned in the settlement deed pleading that the properties as mentioned in the settlement deed were a joint family properties. It is on the basis of these contradictory stand, Ld. Counsel for the claimant has urged that there have been inconsistent pleas taken by the respondent and therefore such pleas cannot be accepted.

13. What is before me right now is an application filed U/s 17 of the Act to which no specific reply was filed and also having looked into the statement of defence where although the respondent have laid emphasis on the family settlement but at the same time did not deny the existence of execution of lease deed and also not denied having received the termination notice but denying its validity on the ground of pre-mature termination. The tribunal has to determine if the claimant has been successful in making out a case for grant of interim relief by claiming damages/usage charges after termination of the tenancy. The interim relief as claimed by the claimant when weighed judiciously and consciously there is no denial of fact that the Lease Deed was duly executed between the parties and also there is no denial of fact that termination notice was sent by the claimant to the Respondent which was received by the Respondent but as I find, no reply to this notice was given by the respondent. Whether it was valid notice or not is a matter which will be looked into in depth when occasion arises but as on date, admittedly termination notice stood served on the respondent's society and once notice stand served, the contractual obligations between the parties come to an end and the person to whom notice is given ceases to acquire the status of a contractual tenant and indeed he becomes a statutory tenant and in case the statutory tenant does not leave or vacate the premises, he becomes liable to pay the damages/mesne profits and/or usage charges and occupation charges of the premises as per market value as prevalent. The provisions of Section 17 are quite wide and exhaustive in nature giving ample power to the tribunal to pass interim orders as envisaged under this provision.

14. To prove as to how much is the rental value of such premises, the claimant has filed Registered Lease Deed dated 10.09.2021 executed in favour of respondent's society, another piece of land in the same vicinity measuring 2366 Sq. Yds. at a monthly rent of Rs.6,00,000/- with 15% enhancement after every five years and another Lease Deed dated 06.03.2025 measuring 8870 Sq. Yds. in the same vicinity leased at monthly rent of Rs.9,00,000/- with annual escalation of 5%, it is noticed such lease deeds indicate that these two properties are just at a stone throw away distance from the school out of which, one property is being run by the respondent's society. What else is coming to my mind is that the piece of land in dispute of about 1 Acres is not just a piece of land but a play ground being used by the school institution for the purposes of outdoor activities which are so essential for physical

and mental growth of the students that the school may not able to run at all without such playground which is an integral part of the school building. Classes can be held in open but sport activities and outdoor games cannot take place in class rooms and for that reason playground is not more important but is equally important for running the educational institution. Therefore, looking to all the aspects and more particularly where the claimant prima facie is the owner by virtue of Registered Sale Deed dated 19.05.1988 and is only getting Rs.1,000/ per month for her 1 Acre of piece of land and in actuality, the prevailing market rent of the abutting land of 2366 Sq. Yds. has been shown as let out at a monthly rent of Rs.6,00,000/- whereas the land of the claimant is about 1 Acre and also looking to another Lease Deed dated 06.03.2025 where the monthly rent shown as Rs.9,00,000/- which is abutting the school of the respondent and therefore, to my mind the interim relief needs to be determined in the light of these two lease deeds which are close by to the land of the claimant.

15. Now coming the quantum of such usage charges, though the claimant has claimed Rs.6,00,000/- per month and thereafter Rs.7,50,000/- per month, I feel that looking at all the circumstances and also taking into consideration that it is an application seeking interim relief only, the usage charges as claimed by the claimant in their claims being of the same amount cannot and should not be granted as that will tantamount to granting final relief and not the interim one. Looking to all circumstances and the peculiar facts of the case where so many issues as raised by the Respondent and repudiated by the claimant, which are yet to be gone into, when the parties would be given opportunity to adduce evidence and also by interpretation of such documents, the claimant should not be allowed Rs.6,00,000/- per month, it being a final relief claimed by the claimant in the statement of claim and also evidence yet to be led in this regard but since the claimants have made out case for grant of interim relief qua usage charges, it shall be just and expedient that the claimant shall be entitled to Rs.3,00,000/- per month as mesne profit/usages charges from the date when the six months period of termination of lease deed expired. I am further of the opinion that this amount should not be paid straightaway to the claimant as fate of the case is yet to be decided. I therefore consider it appropriate that the respondent shall open a saving Bank account in UCO Bank, Delhi High Court Branch in joint name of the claimant and the respondent within 30 days from the date of the order and shall deposit the usage charges at the rate of Rs.3,00,000/- per month commencing from 15.10.2018 till the date of order by creating a joint FDR as stated above so as to fetch interest on it and that the FDR shall be deposited with Tribunal and neither party shall withdraw this amount and further the respondent shall keep on depositing the said amount by 7th of each English calendar month with the Bank and the Tribunal shall issue

instructions to the Bank not to permit the Claimant and Respondent to withdraw any amount being deposited by them till the disposal of this arbitral proceedings.

16. As regard prayer of the claimant for inspection of the land in question and also her prayer restraining the respondent from creating third party interest, I am of the view that such interim prayer(s) are bonafide in nature as the claimant being the Lessor, shall have the right to inspect the property in question not weekly but monthly after giving 3 days notice to the Lessee. As regards the relief of creating third party interest, it is considered expedient that in order to protect the property so as not to change hands during the pendency of proceedings, it is ordered that no third party interest of any nature shall be created by the respondent in any manner.

Accordingly the application of the claimant is disposed off."

25. In order to appreciate whether the learned Arbitrator has acted within the permissible contours of discretion while exercising jurisdiction under Section 17 of the A&C Act, it is necessary to briefly advert to the reasoning recorded in the Impugned Order. A perusal thereof reveals, *inter alia*, the following findings:

(a) The learned Arbitrator noted that the disputes between the parties arise out of rival claims concerning ownership, termination of the lease deed dated 02.05.2000, and entitlement to usage charges/*mesne* profits, which are contentious issues requiring adjudication upon evidence and, therefore, cannot be conclusively determined at the interlocutory stage.

(b) It was expressly observed that the arbitral proceedings are at a nascent stage and that the rival pleas raised in the Statement of Claim and Statement of Defence involve disputed questions of fact and law necessitating a full-fledged trial.

(c) The learned Arbitrator considered that the execution of the lease deed and service of the termination notice were not denied, and that continued possession of the Subject Property by the

Appellant warranted an equitable interim arrangement pending final adjudication.

(d) The Tribunal examined registered lease deeds of nearby properties placed on record by the Claimant for the limited purpose of forming a *prima facie* view regarding prevailing rental value in the vicinity, without treating such material as determinative of final *mesne* profits.

(e) While the Claimant had sought substantially higher amounts towards usage charges, the learned Arbitrator declined to grant the claimed sums in entirety, observing that such a direction would amount to granting substantive final relief at the interim stage.

(f) Instead, a moderated amount of ₹3,00,000/- per month was fixed as an interim measure, with a direction that the same be secured through a joint interest-bearing arrangement.

(g) The learned Tribunal further considered that the Subject Property formed an integral part of the functioning of the Appellant's educational institution and that an outright deprivation of interim protection to the Claimant during pendency of arbitration would result in inequity.

(h) Protective directions permitting periodic inspection of the property and restraining the creation of third-party interests were considered necessary to preserve the subject matter of the arbitration and to prevent multiplicity of proceedings.

(i) The learned Arbitrator clarified that all observations were *prima facie* in nature and that the parties would be afforded full opportunity to lead evidence on issues of title, validity of

termination, and final determination of *mesne* profits at the appropriate stage.

26. Having bestowed anxious consideration on the Impugned Order, rival submissions, and the material placed on record, this Court is constrained to observe that the Impugned Order, though ostensibly passed in exercise of jurisdiction under Section 17 of the A&C Act, travels beyond the permissible contours of interim protection and partakes, in substance, the character of a partial final adjudication. The jurisdiction under Section 17 of the A&C Act is essentially preservative and protective; it is neither intended to prejudge contentious issues nor to fasten substantive monetary liability where the foundational entitlement itself remains seriously disputed.

27. At the threshold, it is evident that the learned Arbitrator proceeded on the premise that the lease had been validly terminated and that the Appellant had consequently assumed the status of an unauthorized occupant, even while acknowledging that the termination notice itself was under a cloud. These findings, however, lie at the very core of the arbitral dispute and necessarily require adjudication on the basis of evidence yet to be led.

28. The validity of the termination notice dated 09.04.2018, the rival claims of ownership, and the alleged family settlement are all issues that necessarily require a full-fledged trial. In the absence of even a *prima facie* determination on these foundational questions, the direction to deposit substantial *mesne* profits, in effect, amounts to granting a part of the final relief at an interlocutory stage.

29. This Court also finds considerable force in the submission that the reliefs sought by the Claimant in the application under Section 17

of the A&C Act are, in substance, identical to the monetary reliefs claimed in the Statement of Claim itself.

30. The prayers seeking direction to deposit accumulated damages/*mesne* profits as well as recurring monthly usage charges mirror the final reliefs sought in arbitration and are predicated upon the assumption that the lease stands validly terminated and that the Appellant is an unauthorized occupant. Such reliefs, by their very nature, cannot be granted at an interlocutory stage without adjudication of the foundational disputes. The exercise of jurisdiction under Section 17 of the A&C Act is intended to be preservative and not determinative; it cannot be employed as a vehicle to secure, in advance, what is essentially the subject matter of final adjudication.

31. It is well settled that the grant of interim measures under Section 17 of the A&C Act must be guided by the triad of principles governing interim injunctions, *namely*, existence of a *prima facie* case, balance of convenience, and irreparable injury. The law in this regard has been succinctly summarised by this Court in ***Indo Spirits** (supra)*, which reads as under:

> "**28.** In ***Skypower Solar India (P) Ltd. v. Sterling and Wilson International FZE***, Division Bench of this Court has held interim protection akin to Order XXXVIII Rule 5 of the CPC can be granted only upon a *prima facie* finding of a real and imminent risk of asset alienation or conduct intended to frustrate enforcement of a prospective award, and not merely on the existence of a *prima facie* case or balance of convenience, which is extracted as follows:
>
> > "**47.** There is no finding (prima facie or otherwise) by the learned Single Judge that, if S&W prevails in the arbitral proceedings, it would be unable to enforce the arbitral award in its favour if the amounts as claimed are not secured. There is no allegation that Appellants 2 to 6 are alienating their assets and are acting in a manner that would frustrate the enforcement of an arbitral award that may be delivered in favour of S&W.
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> > ****

49. We have carefully examined the impugned judgment. Whilst, the learned Single Judge has found that S&W has established a prima facie case and that the balance of convenience is also in its favour, there is no finding to the effect that Appellants 2 to 6 are alienating their assets or would do so and frustrate S&W's recourse to enforce the arbitral award if it prevails in the arbitral proceedings. There is no finding that absent an order for securing the amounts in dispute, S&W would be unable to enforce the arbitral award that may be made in its favour. The learned Single Judge had accepted that any change in the shareholding pattern of original Respondents 2 to 8 would have a bearing on the arbitration proceedings as well as the execution of the arbitral award. The observations to the said effect are contained in para 74 of the impugned judgment, which reads as under: (***Sterling & Wilson International FZE* v. *Sunshakti Solar Power Projects (P) Ltd.*, 2020 SCC OnLine Del 2414**, SCC OnLine Del 74)

> "*74.* It is clear that under Section 9, the court has the power to issue interim directions to non-parties to arbitration agreement. Keeping in view the judgments referred to above, in my opinion, petitioner is right in its contention that if the shareholding pattern of respondents changes by transferring shares, there is likelihood of changes in the management, overall control and the decision-making power. This would have a significant bearing on the arbitration proceedings as well as the ultimate execution of the award. Thus, interim directions are required to be issued against Respondents 2 to 8. The judgments relied upon by respondents are distinguishable on the facts of this case and thus of no avail to them."

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63. The principle for granting orders under Order 38 Rule 5CPC are now well-settled. In ***Raman Tech. & Process Engg. Co.* v. *Solanki Traders*, (2008) 2 SCC 302**, the Supreme Court had observed that the power under Order 38 Rule 5 are drastic and extraordinary powers and are required to be used sparingly and in accordance with the rule. The Supreme Court also observed that the purpose of Order 38 Rule 5 was not to convert an unsecured debt as a secured one. The object of Order 38 Rule 5 was to prevent any defendant from defeating the realisation of a decree that may ultimately be passed in favour of the plaintiff. The relevant extract of the said decision is set out below: (SCC p. 304, paras 4 and 5)

"*4.* The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realisation of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied that the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5CPC. It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well-settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

5. The power under Order 38 Rule 5CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for

> coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs, by obtaining orders of attachment before judgment and forcing the defendants for out of court settlements, under threat of attachment."
>
> ****
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> **70.** The principles underlying the object of Order 38 Rule 5CPC are, as noticed earlier, well-settled. Such orders are required to be issued in case where the court is satisfied that the party has established a strong prima facie case and that the respondents are acting in a manner that would defeat the realisation of the decree. These principles must be equally satisfied for securing protective orders under Section 9 of the A&C Act, which are in the nature of orders under Order 38 Rule 5CPC."
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> ***(Emphasis supplied)***

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33. With respect to the application of the well-settled 'triple test' governing the grant of interim injunctions, it is trite that the exercise of such jurisdiction is conditioned upon the satisfaction of three foundational requirements *namely*, (i) the existence of a *prima facie* case; (ii) the balance of convenience tilting in favour of the applicant; and (iii) the likelihood of irreparable injury in the absence of interim protection. These jurisdictional preconditions cannot be presumed or invoked as a matter of course. They must be the subject of a conscious and reasoned judicial determination, founded upon an objective evaluation of the material placed on record.

34. The Hon'ble Supreme Court in ***Bloomberg Television Production Services India Pvt. Ltd. v. Zee Entertainment Enterprises Ltd***., has underscored that the grant of interim relief must rest upon a careful and reasoned application of the aforesaid threefold test and not upon a mechanical or conclusory invocation thereof. The Court cautioned that a mere reproduction of submissions or precedents is insufficient; the adjudicatory authority must expressly analyse how each limb of the test stands satisfied on the facts of the case and furnish cogent reasons in support of its conclusion. Relevant paragraph of the said judgment has been extracted as under:

> "**4.** The threefold test of establishing: (i) a prima facie case, (ii) balance of convenience, and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits. However, this threefold test must not be applied mechanically [***DDA v. Skipper Construction Co.***

> ***(P) Ltd., (1996) 4 SCC 622***, para 38], to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyse how the threefold test is satisfied. A cursory reproduction of the submissions and precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case."
>
> **35.** To augment, the Hon'ble Supreme Court in ***ArcelorMittal*** (*supra*) has reiterated that these foundational principles are equally applicable in proceedings under Sections 9 of the A&C Act. By necessary extension, the same discipline in reasoning must inform the exercise of power under Section 17 of the A&C Act by an Arbitral Tribunal.
>
> ***(emphasis added)***

32. A careful and meaningful reading of the Impugned Order, in the considered opinion of this Court, does not disclose any discernible satisfaction of the essential parameters governing the grant of interim relief under Section 17 of the A&C Act. The learned Arbitrator has not recorded any cogent or reasoned finding to demonstrate the existence of an imminent threat to the subject matter of the arbitration, nor has any urgency been articulated so as to justify the issuance of monetary directions of such magnitude at an interlocutory stage. Further, there is no finding indicating any immediate danger or compelling circumstance warranting a direction for deposit of substantial *mesne* profits, particularly when numerous and serious disputed questions of fact remain pending adjudication. The Impugned Order is also conspicuously silent on how the balance of convenience tilts in favour of the Claimant or how irreparable loss or injury would ensue in the absence of the interim relief granted.

33. It is no doubt true that an application under Section 17 of the A&C Act is not strictly bound by the procedural rigours of the CPC. Nevertheless, the foundational principles governing the grant of

interim relief, *namely*, the existence of a *prima facie* case, balance of convenience, and irreparable injury, should be satisfied.

34. The power under Section 17 of the A&C Act cannot be invoked merely upon the assertion of a claim. It is to be exercised judiciously and only in circumstances where the preservation of the subject matter of the arbitration or the efficacy and enforceability of the eventual Arbitral Award is demonstrably at risk. In the absence of such findings, the grant of substantial monetary relief at an interim stage cannot be sustained.

35. This Court is of the considered opinion that the reliance placed by the learned Arbitrator on lease deeds of 2021 and 2025 to retrospectively determine *mesne* profits from 2018 further underscores the overreach. The fixation of ₹3,00,000/- per month has been undertaken without any evidentiary scrutiny regarding comparability, temporal relevance, amenities, size, or nature of use of the Subject Property. Such a mechanical adoption of exemplars, divorced from trial or expert assessment, transforms an interlocutory order into an adjudicatory determination, thereby trenching upon the domain reserved for final award. The approach adopted overlooks that quantification of *mesne* profits is inherently fact-intensive and cannot be presumed at an interim stage.

36. The nature of the Appellant's activities also assumes relevance in balancing equities. The imposition of heavy monetary liabilities at an interim stage, without a conclusive determination of rights, carries the potential to disrupt the functioning of an educational institution catering to students. The learned Arbitrator, in directing retrospective and prospective deposits, has not sufficiently weighed the

disproportionate prejudice that may be occasioned to the Appellant *vis-à-vis* the absence of any demonstrable urgency or necessity on the part of the Claimant. In such circumstances, the impugned directions cease to be protective and assume the character of a coercive measure, thereby falling outside the legitimate ambit of Section 17 of the A&C Act.

37. The decision of the Hon'ble Supreme Court in ***Evergreen Land Mark Pvt. Ltd. v. John Tinson & Company Pvt. Ltd.***[8] assumes particular significance. The Apex Court has authoritatively held that an Arbitral Tribunal, while exercising jurisdiction under Section 17 of the A&C Act, cannot, under the guise of granting interim protection, direct the deposit of disputed monetary amounts, including rentals or *mesne* profits, where the very liability to pay remains seriously contested and awaits adjudication on merits. The relevant portions of the said judgment are reproduced hereunder:

> "**10.** At the outset, it is required to be noted that the dispute is with respect to the rental amount for the period between March 2020 to December 2021, for which the Arbitral Tribunal has directed the appellant to deposit while passing the order by way of an interim measure on the applications under Section 17 of the Arbitration Act. The liability to pay the lease rental for the period between March 2020 to December 2021 is seriously disputed by the appellant by invoking the force majeure principle contained in Clause 29 of the lease agreement.
>
> **11.** It is the case on behalf of the appellant that for a substantial period there was a total closure due to lockdown and for the remaining period the appellant was allowed with 50% capacity and therefore, the force majeure principle contained in Clause 29 shall be applicable. When the same was submitted before the Arbitral Tribunal, no opinion, even a prima facie opinion on the aforesaid aspect was given by the Arbitral Tribunal. In para 39, it is observed that "it would not be fair at this stage of the proceedings, where evidence is yet to be adduced by the parties in support of their rival contentions on the issues that arise, to record any definitive opinion on the import and effect of the force majeure clause (Clause 29)

[8] (2022) 7 SCC 757

> contained in the lease deed". Therefore, applicability of the force majeure principle contained in Clause 29 is yet to be considered by the Arbitral Tribunal at the time of final adjudication.
>
> **12.** Hence, the liability to pay the rentals for the period during lockdown is yet to be adjudicated upon and considered by the Tribunal. Therefore, no order could have been passed by the Tribunal by way of interim measure on the applications filed under Section 17 of the Arbitration Act in a case where there is a serious dispute with respect to the liability of the rental amounts to be paid, which is yet to be adjudicated upon and/or considered by the Arbitral Tribunal. Thus, no such order for deposit by way of an interim measure on applications under Section 17 of the Arbitration Act could have been passed by the Tribunal."
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> ***(emphasis added)***

38. The present case stands on a similar footing as that considered in ***Evergreen Land Mark Pvt. Ltd.*** *(supra)*, inasmuch as, *inter alia*, the alleged obligation to pay *mesne* profits remains seriously disputed and is intrinsically intertwined with issues relating to title, validity of termination, and the nature of possession, all of which are yet to be adjudicated upon evidence.

39. By directing recurring monetary deposits at the interlocutory stage, the learned Arbitrator has, in effect, ventured into the realm of adjudication and granted a relief which bears the trappings of a provisional decree, thereby transgressing the limited and preservative scope of jurisdiction under Section 17 of the A&C Act.

40. Equally, the Impugned Order fails to demonstrate how the alleged non-payment of *mesne* profits would frustrate or render nugatory the eventual award. Section 17 of the A&C Act is designed to preserve the fruits of arbitration where a real and imminent risk is established; it is not intended to secure a claimant against speculative future contingencies. The record does not disclose any material indicating dissipation of assets, imminent frustration of enforcement, or any circumstance warranting such intrusive financial directions.

41. As stated, in the Impugned Order, the balance of convenience, too, does not appear to have been weighed in its proper perspective. The Appellant is an educational society running a school, and the imposition of substantial recurring financial liability is likely to inflict grave prejudice which cannot be adequately restituted should the Appellant ultimately succeed. Interim measures ought to maintain equilibrium between the parties; they cannot tilt the scales so decisively in favour of one side that the arbitral proceedings themselves stand prejudiced.

42. At this stage, this Court also finds it apposite to note that the record of the present case discloses the existence of numerous and substantial disputed questions of fact. These issues, which bear materially upon the rights and liabilities of the parties, do not appear to have been adequately noted by the learned Arbitrator while passing the Impugned Order at the interim stage. It is, however, clarified that this Court is consciously refraining from undertaking any detailed examination of such disputed facts or expressing any opinion thereon, lest any observation made herein either way prejudice the parties in the pending arbitral proceedings.

43. Thus, viewed holistically, this Court is of the considered opinion that the learned Arbitrator, while purporting to grant interim protection, has traversed beyond the permissible limits of Section 17 of the A&C Act and has, in effect, granted a form of final monetary relief without trial. The absence of satisfaction of the settled triple test, coupled with the premature quantification of *mesne* profits on disputed premises, renders the Impugned Order unsustainable in law.

CONCLUSION:

44. In view of the foregoing discussion, this Court is satisfied that the Impugned Order dated 16.09.2025, insofar as it directs the Appellant Society to deposit *mesne* profits/usage charges at the rate of ₹3,00,000/- per month with effect from 15.10.2018 and imposes recurring financial obligations during the pendency of the arbitral proceedings, travels beyond the permissible contours of interim jurisdiction under Section 17 of the A&C Act, and consequently warrants interference under Section 37(2)(b) of the A&C Act, and therefore, to that extent, the Impugned Order is set aside.

45. However, the ancillary directions issued by the learned Arbitrator, namely, permitting periodic inspection of the Subject Property upon three days' prior notice and restraining the Appellant from the creation of any third-party interests therein, are essentially protective in nature and are intended to preserve the subject matter of the arbitration.

46. In the considered opinion of this Court, such directions neither determine the substantive rights of the parties nor cause any prejudice to the Appellant itself. Accordingly, the said directions are upheld and shall continue to operate during the pendency of the arbitral proceedings.

47. At this stage, it is clarified that nothing contained in this Judgment shall be construed as an expression of opinion by this Court on the merits of the disputes between the parties. The observations made herein are confined strictly to the adjudication of the present Appeal and shall not be treated as a final opinion on the substantive issues arising in the arbitral proceedings.

48. Accordingly, the rights and contentions of both parties are kept open and reserved to be urged before the learned Arbitrator, in accordance with law.

49. Accordingly, the present Appeal stands partly allowed in the aforesaid terms. Pending application(s), if any, also stand disposed of.

50. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 26, 2026/sm/kr