

**Misc.Case (Arbitration) No.07 of 2026**

Present :Sri Himanil Bhattacharjee (WB01082), District Judge (I/c)

*Santosh Kumar Roy*

.....Petitioner

Vs.

*M/s Bharat Petroleum Corporation Ltd & Anr*

.....Oppostie Parties

**LATER**

**Order No.1 dated 06.02.2026**

At this stage, Ld. Advocate for the petitioner moves an application under section 9 of the Arbitration and Conciliation Act, 1996 praying for an ad interim order of injunction.

Heard. Perused. Considered.

The case of the petitioner, in brief, is that the predecessor of the petitioners Sri Phani Bhusan Roy along with other, the then partner Sri Harisadhan Ghosh started petrol pump business under the name and style of 'M/s Manada Motor Service' under the joint venture of M/s Bharat Petroleum Corporation Ltd on 21.01.1949. After demise of said Harisadhan Ghosh on 25.08.1985, his only legal heir Smt. Anita Ghosh relinquished her proportionate share of the said partnership firm on 02.12.1985 and after demise of said Phani Bhusan Roy on 24.04.1986 Sri Arun Kumar Roy, Sri Tapan Kumar Roy, Sri Swapan Kumar Roy and Sri Santosh Kumar Roy made a partnership agreement as legal heirs of said Phani Bhusan Roy with equal share which was affirmed on 17.04.1996 before the Notary Public. Accordingly, on 01.07.2013 the partners of 'M/s Manada Motor Service' being licensee and M/s Bharat Petroleum Corporation Ltd started a renewed joint venture agreement to start a petrol pump business at Howrah. Accordingly, one Memorandum of Agreement was executed on 01.07.2013 between Bharat Petroleum Corporation Ltd and the above mentioned persons. After demise of said Swapan Kumar Roy on 18.11.2018, the BPCL joint venture agreement dated 01.07.2013 came to an end but the said licence was temporarily renewed for further three months, but till today, said licence is acted upon as permitted pursuant to the letter dated 15.12.2020 of Bharat Petroleum Corporation Ltd.

Subsequently, certain dispute arose between the OP No.1 and the petitioner, and accordingly, previously a proceeding under section 9 of the Arbitration and Conciliation Act, 1996 being Misc.Case (Arbitration) No.20 of 2021 was filed by the petitioner before this court and vide order

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No.1 dated 03.03.2021 an interim protection was granted to the petitioner for a limited period.

It is stated in the injunction application supported by an affidavit that subsequently an arbitration proceeding was started which is still pending before the Ld. Sole Arbitrator Mr. Ayan Banerjee, Ld. Advocate of Hon'ble High Court at Calcutta. It is also stated in the petition supported by an affidavit that the said earlier interim order of injunction was time to time extended, but subsequently, on mutual understanding between both the parties, the petitioner did not take further steps in the said proceeding, and thus, the interim order got vacated and the proceeding was dismissed for default.

Now, the respondent has served notice upon the petitioner and others on 02.02.2026 intimating that possession of the concerned property would be taken over on 09.02.2026 which is totally unfair to the petitioner, as argued by the Learned Advocate for the petitioner. Learned Advocate for the petitioner therefore filed the instant case seeking an order of injunction to secure the interest of the petitioner.

As per Order 9 Rule 9 (1) of C.P.C., a proceeding dismissed for default in presence of the adverse party operates as a bar against filing a fresh proceeding on the same cause of action and the remedy is to restore the earlier proceeding.

It is not made out in Misc.Case (Arbitration) No.20 of 2021 as to whether the same was dismissed of default in presence of the respondent or not. But I am of the view that the bar would be attracted for a proceeding in respect of the same cause of action. The letter dated 02.02.2026 has provided a new cause of action to the petitioner to file the present application. There is urgency in filing the matter in hand and the petitioner shall suffer irreparable loss and injury in case the prayer for ad interim injunction is refused.

It is the statutory provision that a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 can be filed before the court even during pendency of an arbitration proceeding.

Considering all, in my considered view, an ex-parte ad interim injunction for a limited period should be granted, or else, the very object of filing the interim injunction application might be defeated.

Accordingly, the opposite parties are hereby restrained from taking possession in respect of 'B' & 'C' schedule properties till 07.03.2026.

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Issue notice upon the opposite parties asking them to show cause by 07.03.2026 as to why the application under section 9 of the Arbitration and Conciliation Act, 1996 shall not be allowed in favour of the petitioner.

The petitioner is directed to put in requisites at once.

To date i.e. on **07.03.2026** for S/R and A/D.

Dictated & corrected by me.

*Sd/- Himanil Bhattacharjee*

District Judge (I/c), Alipore

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(JO Code : WB01082)

