

DALPAT SINGH NARUKA & ANR.

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v.

KARUNA BANSAL & ORS.

(Civil Appeal Nos. 3651-3653 of 2022)

April 21, 2022

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**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

Arbitration and Conciliation Act, 1996 – ss.9 and 37 – Scope of appeal – Limited jurisdiction vested u/s.37 – Interim orders passed by High Court in appeals preferred by respondents u/s.37, being aggrieved by order passed by the Commercial Court, dismissing application for interim relief filed by the respondents u/s.9 – Held: By passing the impugned orders, the High Court acted in excess of the limited jurisdiction vested in it u/s.37 – The scope of the appeal preferred by the respondents u/s.37 ought to be confined to examining the merits of the order passed by the Commercial Court that refused to grant any interim measures in favour of respondents on the application moved by them u/s.9 – However, respondents have managed to take appeal proceedings on an entirely different trajectory – As a result, the Appellate Court conducted a roving and fishing inquiry relating to the manner in which investigation was being conducted in respect of FIR registered at the instance of the respondents, to the point that not only was a status report and the case diary called for, the Investigating Officer was also summoned and subsequently, the investigation was been transferred to the Special Operation Group – None of the three impugned orders could have been passed by the Appellate Court in proceedings arising from an order passed u/s.9 – If the respondents have any grievance regarding the unfair or partial manner of the investigation conducted in respect of the FIR registered on their complaint, it is for them to seek appropriate legal recourse before the competent court on the criminal side – However, the proceedings initiated by the respondents u/s.37 can certainly not be permitted to be misused and virtually highjacked towards this end – Impugned orders of High Court are accordingly quashed and set aside – High Court to decide appeal preferred by the respondents strictly in accordance with law and well within the parameters contemplated u/s.37.

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- A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3651-3653 of 2022.

From the Judgment and Order dated 24.02.2022, 11.03.2022 and 29.03.2022 of the High Court of Judicature at Rajasthan at Jaipur Bench in CMA No.431 of 2021.

- B Dr. A. M. Singhvi, Sr. Adv., Abhishek Gupta, Ms. Megha Karnwal, Ajat Shatru, Nidhi Ram Sharma, Advs. for the Appellants.

Sidharth Luthra, Sr. Adv., Ms. Archana Pathak Dave, Ms. Vanya Gupta, Aditya Bohra, Kaustubh Seth, Ayush Kaushik, Advs. for the Respondents.

- C The following Order of the Court was passed:

ORDER

1. Leave granted.

- D 1.1 The present appeals by way of special leave are directed against three interim orders dated 24th February, 2022, 11th March, 2022 and 29th March, 2022 passed by the Division Bench of the High Court of Rajasthan, Jaipur Bench in appeals preferred by the respondents under Section 37 of the Arbitration and Conciliation Act, 1996¹, being aggrieved by an order dated 11th February 2021 passed by the Commercial Court
- E No.1, Jaipur-II dismissing an application for interim relief filed by the respondents under Section 9 of the 1996 Act.

2. On 26th February, 2021, while issuing notice in the appeal preferred by the respondents and summoning the records of the Commercial Court, the appellants herein were restrained by the High

- F Court from alienating the property described as "Hotel Grand Uniara", subject matter of dispute between the parties. Vide order dated 13th August, 2021, the High Court directed the appellants to produce the original stamp papers on which a Supplementary Partnership Deed had allegedly been executed by them in view of the plea taken by the
- G respondents that the said Deed had been antedated to deprive them of their rights over the subject property. One day before 13th August, 2021, on the complaint of the respondent No.3 relating to the aforementioned Supplementary Partnership Deed, FIR No.293/2021 was registered against the appellants and some others at PS Vaishali Nagar, Jaipur.

H ¹ in short '1996 Act'

3. It is not in dispute that the investigation in respect of FIR 293/2021 was subsequently transferred to the CID-CB and the Additional Director General of Police, Crime Branch has constituted a Special Investigating Team (SIT) to investigate FIR No.211/2019, registered against the respondents on the complaint of the appellants as well as FIR No.293/2021.

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4. It has been submitted by the learned counsel for the appellants that when the appellant No.1 had filed an application before the High Court to bring on record the original stamp papers on which the Supplementary Partnership Deed had been executed along with an affidavit, by the first impugned order dated 24th February, 2022, the High Court directed the investigating agency to file a status report pertaining to FIR No.293/2021 and produce the case diary of the said FIR for its perusal. By the second impugned order dated 11th March, 2022, upon perusing the status report and the case diary produced before it, the High Court summoned the Investigating Officer on the next date of hearing. By the third impugned order passed on 29th March, 2022, opining that investigation in FIR No.293/2021 was not being conducted in a fair and impartial manner, the High Court has directed that said FIR be transferred to the Special Operation Group (SOG), Jaipur with a further direction that the said investigation shall be supervised by an Officer of the rank of Superintendent of Police, who has been called upon to submit a report within three weeks.

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5. Learned counsel for the appellants states that the aforesaid impugned orders travel far beyond the scope and parameters of interference, contemplated under Section 37 of the 1996 Act. All that was required of the High Court to examine in the said proceedings is the order dated 11th February, 2021, passed by the Commercial Court, rejecting the Section 9 application for interim relief moved by the respondents under the 1996 Act. He states that within one week of preferring the appeal under Section 37 of the 1996 Act, the respondents had approached the learned Sole Arbitrator appointed by the High Court in a Section 11 petition filed by them and had filed an application under Section 17 for seeking interim relief, thus rendering the appeal preferred by them under Section 37, as infructuous. It is thus contended that the High Court has acted in excess of its jurisdiction by passing the impugned orders and has virtually taken over the task of supervising the criminal investigation subject matter of FIR No.213/2021, registered on the

- A complaint of the respondents, thereby seriously prejudicing the rights of the appellants.

6. Mr. Sidharth Luthra, learned Senior Advocate appearing on behalf of the respondents has stoutly defended the impugned interim orders. He submits that the appellants have left no stone unturned to oust the respondents from the business under the Partnership Deed constituted on 3rd January, 2008 though substantial monetary investment has been made by them besides the hard work and efforts put in by them to develop the hotel business.

7. On hearing the arguments advanced by learned counsel for the parties and carefully perusing the records, we are of the firm view that by passing the impugned orders, the High Court has acted in excess of the limited jurisdiction vested in it under Section 37 of the 1996 Act. The scope of the appeal preferred by the respondents under Section 37 of the 1996 Act ought to be confined to examining the merits of the order dated 11th February, 2021, passed by the Commercial Court that has refused to grant any interim measures in favour of the respondents on the application moved by them under Section 9 of the 1996 Act. However, it appears that the respondents have managed to take appeal proceedings on an entirely different trajectory. As a result, the Appellate Court is conducting a roving and fishing inquiry relating to the manner in which investigation is being conducted in respect of FIR No.293/2021 registered at the instance of the respondents, to the point that not only has a status report and the case diary been called for, the Investigating Officer has also been summoned and subsequently, the investigation has been transferred to the Special Operation Group, Jaipur.

8. We are afraid, none of the three impugned orders could have been passed by the Appellate Court in proceedings arising from an order passed under Section 9 of the 1996 Act. If the respondents have any grievance regarding the unfair or partial manner of the investigation conducted in respect of the FIR registered on their complaint, it is for them to seek appropriate legal recourse before the competent court on the criminal side. However, the proceedings initiated by the respondents under Section 37 of the 1996 Act can certainly not be permitted to be misused and virtually highjacked towards this end.

9. For the reasons stated above, the impugned orders dated 24th February, 2022, 11th March, 2022 and 29th March, 2022 are not

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sustainable and are accordingly quashed and set aside. The High Court is requested to decide D.B. Civil Misc. Appeal No.431/2021 preferred by the respondents strictly in accordance with law and well within the parameters contemplated under Section 37 of the 1996 Act. It is, however, clarified that this Court has not interfered with or overturned the interim order dated 26th February, 2021, passed by the High Court in the above proceedings, restraining the appellants herein from alienating the subject property.

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10. The appeals are allowed and disposed of, along with pending applications, in the above terms, while leaving the parties to bear their own costs.

Bibhuti Bhushan Bose

Appeals allowed.