

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF AUGUST, 2021

PRESENT

THE HON'BLE Mr. JUSTICE ARAVIND KUMAR

AND

THE HON'BLE Mr. JUSTICE PRADEEP SINGH YERUR

COMMERCIAL APPEAL No.96 OF 2021

BETWEEN:

M/S.BHARATH INFRA TECH
PRIVATE LIMITED
THROUGH ITS CHAIRMAN
MR.DAYANAND REDDY
48, HEBBAGODI
HOSUR MAIN ROAD
HUSKUR GATE
ELECTRONIC CITY POST
BENGALURU – 560 100

CORRECT ADDRESS:

M/S.BHARATH INFRA TECH
PRIVATE LIMITED
HAVING ITS REGISTERED
OFFICE AT NO.186
1ST FLOOR, 1ST CROSS
HOSUR MAIN ROAD
WILSON GARDEN
BENGALURU – 560 027
REP.BY ITS DIRECTOR
MR.GAGANESH REDDY NARAYANA REDDY

... APPELLANT

(BY SRI Y.R.SADASHIVA REDDY, SENIOR COUNSEL FOR
SRI RAHUL S.REDDY, ADVOCATE)

AND:

1. MR.HENY LACHMAN MAHTANI
S/O.LATE LACHMAN ISARDAS MAHTANI
AGED ABOUT 56 YEARS
R/AT 13TH FLOOR, FLAT 'A'
WOODBURY COURT
137 POKFULAM ROAD
HONG KONG
ON BEHALF OF M/S.PLATINUM
REALTORS LIMITED
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
2. MR.HANUT SINGH
S/O.MR.N.B.SINGH
AGED ABOUT 51 YEARS
1, KAPASHERA ESTATE
NEW DELHI - 110 037
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
3. MR.HENY LACHMAN MAHTANI
S/O.LATE LACHMAN ISARDAS MAHTANI
AGED ABOUT 56 YEARS
R/AT 13TH FLOOR, FLAT 'A'
WOODBURY COURT
137 POKFULAM ROAD
HONG KONG
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
4. MR.PANKAJ RISHI
S/O.MR.PRITHVI RAJ RISHI
AGED ABOUT 60 YEARS
19 UNDERWOOD DRIVE
WEST ORANGE, NJ07052, USA
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
5. MR.MICK DADLANI
S/O.MR.PREM DADLANI
AGED ABOUT 50 YEARS

7717 BARNSTABLE PLACE
ROCKVILLE, MD 20855, USA
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI

6. MR.JITEN MANSUKH RADIA
S/O.MR.MANSUKLAL POPATLAL RADIA
AGED ABOUT 58 YEARS
R/AT 42, KINGSEND RUISLIPP
MIDDLESEX J4 7DA, ENGLAND
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
7. MR.NICKIE PATEL
S/O.MR.RAMANBHAI BHAGUBHAI PATEL
AGED ABOUT 55 YEARS
2, CRAWFORD AVENUE, WEMBLEY
MIDDLESEX HA0 2HT, ENGLAND
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
8. MS.CHANDINI SANAM RISHI
D/O.MR.PRITHVI RAJ RISHI
AGED ABOUT 55 YEARS
1002E UNIWORLD CITY EAST
SECTOR 30, GURGAON, HARYANA
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
9. MS.REGGIE CHUA SINGH
W/O.MR.HANUT SINGH
AGED ABOUT 47 YEARS
1, KAPASHERA ESTATE
NEW DELHI – 110 037
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
10. MR.MANISH ASHOK MALHOTRA
S/O.MR.ASHOK MALHOTRA
AGED ABOUT 53 YEARS
W-3, FLAT 54, WELLINGTON ESTATE
DLF PHASE-IV, GURGAON, HARYANA

THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI

11. MR.RAMZANALI MURAD KARIMI
S/O.MR.RAMZANALI KARIMI
AGED ABOUT 36 YEARS
1252, MANOR OAKS, CT.DUNWOODY
GEORGIA 30338, USA
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
12. MS.NOORBANU AHMED
D/O.MR.SUNDERJEE KANJI MASKATI
AGED ABOUT 73 YEARS
2424, SPENCERS WAY,
STONE MOUNTAIN
GEOGIA 30087, USA
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
13. MR.SANJIV RALPH NORONHA
S/O.MR.RALPH AUGUSTO NORONHA
AGED ABOUT 54 YEARS
67 STEVENS ROAD NO.01-01
WHITE HOUSE RESIDENCES
SINGAPORE-257 855
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
14. MR.KARAN CHABRIA
S/O.NANDAKUMAR CHABRIA
AGED ABOUT 48 YEARS
9 RHU CROSS, NO 7-13
COSTA RHU, SINGAPORE-437436
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI
15. MR.SUDHIR SINGH DUNGARPUR
S/O.MR.SAMAR SINGH
AGED ABOUT 49 YEARS
403, PALM SPRINGS
GOLF COURSE ROAD
DLF, PHASE – 5, GURGAON

HARYANA – 122 002
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI

16. MR.ANUJA PRIYADARSHINI
MAHINDRA SHARMA
D/O.MR.HARISH C.MAHINDRA
AGED ABOUT 59 YEARS
R/AT 1-B-3, REGENCY PLACE
7, RICHMOND ROAD
BENGALURU – 560 025
THROUGH HIS POWER OF ATTORNEY
MR.ROHIT SETHI

17. M/S.GOLD CITY BUILDERS AND
DEVELOPERS LIMITED
304/306, III FLOOR
GOLD TOWER
RESIDENCY ROAD
BENGALURU – 560 025

.... RESPONDENTS

(BY SRI SIDDHART YADAV, SENIOR COUNSEL FOR
MS.ANITA ABRAHAM, ADVOCATE FOR R-1 TO R-16;
VIDE ORDER DATED 13.08.2021, NOTICE TO
R-17 IS DISPENSED WITH)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13
(1-A) OF THE COMMERCIAL COURTS ACT, 2016 READ WITH
SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT,
1996 PRAYING TO SET ASIDE THE ORDER DATED 17.06.2021
PASSED ON I.A.NO.I IN COM.A.A.NO.65/2021 ON THE FILE OF
LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-
88), BENGALURU & ETC.

THIS APPEAL COMING ON FOR *ADMISSION*, THIS DAY,
ARAVIND KUMAR J., DELIVERED THE FOLLOWING:

J U D G M E N T

Defendant No.1 in Com.AA.No.65/2021 being aggrieved by the order dated 17.06.2021 passed in the said proceedings on IA.No.1 whereunder appellant-defendant No.1 and respondent No.17-defendant No.2, their directors, agents, servants, power of attorneys and managers etc. have been directed to maintain *status-quo* in respect of title and possession of property bearing Municipal No.10, PID No.68/244/10 which is morefully described in the interlocutory application (Annexure-C) are before this Court.

2. This Court while issuing notice to respondents had passed an order on 29.06.2021 to the following effect:

"Issue notice to the respondents returnable on 3rd August 2021.

Our attention is invited to the photographs annexed as Annexures-Y to Y6. In view of the said photographs, at this stage, the appellant is entitled to a limited interim relief. Accordingly, we direct that only that part of the impugned order by which the appellant

has been prevented from raising the construction will remain stayed."

3. Appellant who is defendant No.1 before the Commercial Court has sought to contend that very application filed under Section 9 of the Arbitration and Conciliation Act, 1996 was not maintainable. However, this has been seriously disputed by Sri Siddhart Yadav, learned Senior Counsel appearing for respondent Nos.1 to 16 and he would also contend that present appeal filed by first defendant itself is not maintainable. This Court is of the considered view that any exercise undertaken to address these two issues is likely to prejudice the rights of parties and we say so for the simple reason that Com.AA.No.65/2021 filed by plaintiffs has not yet been disposed of or main matter is still pending. It is only interlocutory application which was filed along with main petition which has been disposed of and same is under challenge in the present appeal. The order of temporary injunction which came to be passed by the Commercial Court on 17.06.2021 was for the first time and a restraint

order has been passed against defendant Nos.1 and 2 namely, appellant and respondent No.17 herein, though Com.AA.No.65/2021 was filed on 29.03.2021. In other words, there was no order of temporary injunction operating against appellant and respondent No.17 herein from 29.03.2021 till 17.06.2021.

4. Be that as it may. Without going into the contentions now raised, it would suffice to direct the Commercial Court to dispose of the main petition or main matter itself which is said to have been listed on 30.08.2021 for final arguments. Hence, making it explicitly clear that order which came to be passed by this Court on 29.06.2021 would continue till disposal of Com.AA.No.65/2021 and Commercial Court without being influenced by the order dated 29.06.2021 and the order dated 17.06.2021, shall adjudicate the matter on merits and dispose of the main petition or main matter expeditiously and at any rate on or before **13.09.2021**,

subject to both parties cooperating with the Commercial Court.

5. It is needless to state that if either of the parties were to seek for adjournment without any justifiable ground, the Commercial Court would not only be entitled to impose on such parties exemplary cost but also put them on terms as it deems fit to regulate its proceedings namely to conclude the proceedings within the time frame fixed by this Court.

6. It is also made clear that we have not expressed any opinion on merits namely, with regard to maintainability of the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 as well as maintainability of present appeal and contentions raised in that regard are kept open.

Subject to aforesaid observation, this appeal stands ***disposed of.***

In view of Commercial Appeal having been disposed of, IA.No.1/2021 for stay does not survive for consideration and it stands consigned to record.

Sd/-
JUDGE

Sd/-
JUDGE

LB