

Shakti Singh vs Sanskar Projects And Housing Limited on 9 February, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

\$~9, 26 & 27

* IN THE HIGH COURT OF DELHI AT NEW DELHI

9

+ ARB.P. 1474/2022

SHAKTI SINGH

Through: Pe
Mr. Vivek Kohli, Sr. Ad
Mr. Nalin Talwar, Ms. N
Bajaj, Mr. Sunil Tyagi,
Sandeep Bhuraria, Ms. Y
Rinchhen, Ms. Astha Gar
Kopal Mittal, Advs.

versus

SANSKAR PROJECTS AND HOUSING LIMITED

..... Respondent

Through: Mr. H.L. Tiku, Sr. Adv. with
Ms. Bharti Kochhar and Ms.
Yashmeet Kaur, Advs.

26

+ O.M.P.(I) (COMM.) 381/2022

SHAKTI SINGH

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+ O.M.P.(I) (COMM.) 13/2023

SHAKTI SINGH

Through: Pe
Mr. Vivek Kohli, Sr. Ad

Signature Not Verified

ARB.P. 1474/2022, O.M.P.(I) (COMM.) 381/2022

Digitally Signed & O.M.P.(I) (COMM.) 13/2023

By:NEHA

Signing Date:09.02.2023

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Mr. Nalin Talwar, Ms.
Bajaj, Mr. Sunil Tyagi,
Sandeep Bhuraria, Ms. Y
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Through: Mr. H.L. Tiku, Sr. Adv. with
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CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 09.02.2023

1. These three petitions invoke the powers conferred on the Court under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996. The existence of an arbitration agreement which stands comprised in the Project Development Agreement² dated 13 May 2019 is not disputed. It appears that the subject property which formed and constituted an integral part of the PDA was desired to be developed by the petitioner with the aid of the respondent here. The agreement envisaged the entire construction and development of the subject property being undertaken by the respondent and on completion of construction and erection of all appropriate structures, the redeveloped property was to be divided as per the shares indicated in the PDA.

2. It is not disputed before this Court that the development work has since concluded and that in fact the third floor of the property The Act PDA Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 which fell in the share of the respondent developer has also been sold sometime in June 2021. It appears that during the process of construction and development of the subject property the petitioner who is undisputedly the original owner thereof had moved out of the said property. The petitioner is essentially aggrieved by the action of the respondent who has failed to permit it to obtain possession of the developed property and has virtually removed all vestiges of possession of the original owner therefrom.

3. Upon disputes having arisen, the petitioner initiated arbitration proceedings by way of a notice dated 16 September 2022. In terms of the said notice the petitioner has raised various claims which are set forth in paragraph 18 thereof.

4. Upon the instant petitions coming to be filed, the Court had called upon the respondents to file their replies. In the reply which has been filed in the Section 9 petition and more particularly O.M.P.(I) (COMM.) 13/2023, it is contended that the petitioner owes a sum of approximately Rs.33,60,926/- and that the claims which have been raised in its notice invoking arbitration are clearly untenable. For the purposes of considering the issues which arise in these three petitions, the Court need not at this stage go into the various individual disputes and claims that have been raised by the parties. This since the Court is presently to consider whether interim directions are liable to be framed.

5. The inter se obligations of parties undisputedly stand governed and controlled by PDA, the relevant parts whereof are extracted hereinbelow:-

"E. AND WHEREAS the said Dr. (Mrs.) Santosh Singh also got the leasehold rights in respect of the SAID PLOT OF LAND Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 converted into freehold in her own name, from the President of India, through Land & Development Office vide Conveyance Deed dated 26th April, 2001 duly registered in the office of the Sub Registrar-V, New Delhi on 19th June, 2001 as Document No.5184 in Additional Book No.I Volume No.2416 on Pages 75 to 78. F. AND WHEREAS the said Dr. (Mrs.) Santosh Singh transferred the SAID PROPERTY by way of gift, to her daughter Smt. Shakti Singh wife of Shri Aditya Krishnan vide Gift Deed dated 29th September, 2017 duly registered in the office of the Sub Registrar- V(1), New Delhi on 29th September, 2017 as Document No.4787 in Additional Book No. I Volume No.427 on Pages 1 to 10. G. AND WHEREAS the said Smt. Shakti Singh also got the SAID PROPERTY mutated in her own name in the records of the N.D.M.C. vide their Letter No.2019-2020/4167/D-1126, dated 24- 04-2019.

H. AND WHEREAS in the manner aforesaid, the OWNER herein became the sale and absolute owner of the SAID PROPERTY, which is the exclusive property of the OWNER and the OWNER has full right, absolute authority to sell, dispose off and transfer the same in whole or in parts and none else except the OWNER has any right, title or interest in the same.

I. AND WHEREAS the OWNER is desirous of getting the SAID PROPERTY re-developed/re-constructed after demolition of the existing structure and have therefore, approached the DEVELOPER to develop the same for and on behalf of the OWNER at DEVELOPER's cost.

J. AND WHEREAS the DEVELOPER is engaged in the business of promotion, development and construction of real estate and is well established in this business.

K. AND WHEREAS the OWNER has represented that the SAID PROPERTY is free from all sorts of encumbrances, charges, liens, claims, lease, prior agreements and except the OWNER no other person has any right, title or interest in the SAID

PROPERTY in any manner whatsoever and the OWNER has full power and authority to enter into this agreement.

XXX XXX XXX

5. The DEVELOPER agrees to, at its sole cost and expense, prepare building plans in accordance with the building bye-laws as applicable on the SAID PROPERTY or as may be prescribed by the authority or authorities concerned with the development on the SAID PROPERTY from time to time and agreed to by the OWNER or through her representative. The DEVELOPER shall obtain permission for the maximum area to be covered on the said property. The total FAR sanctioned on the SAID PLOT OF LAND shall be divided equally on all the four floors i.e. ground floor, first floor, second floor and third floor. All the fees/ payment and Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 expenses incurred in the matter of sanctioning of plans will be borne by the DEVELOPER.

8. That in addition to the DEVELOPER incurring the entire costs, charges expenses and interests, penalties, if any, etc. shall pay to the OWNERS a total sum of Rs.7,00,00,000/- Rupees Seven Crores Only, as consideration against the rights, in the DEVELOPER's Allocation to be transferred in favour of the DEVELOPER or its nominee/s during or on the completion of construction of the building. Out of the total consideration of Rs.7,00,00,000/- (Rupees Seven Crores Only), the DEVELOPER has paid a sum of Rs.3,28,60,147/- (Rupees Three Crores Twenty Eight Lacs Sixty Thousand One Hundred and Forty Seven Only) to the OWNER, at the time of signing of this Property Development Agreement, in the following manner:-

Amount in Rupees	Payment Mode	Number	Dated	Drawn on
1,00,00,000/-	Cheque	000676	02.04.2019	Kotak Mahindra Bank, Vasant Vihar, New Delhi
1,50,00,000/-	Cheque	00677	04.04.2019	Kotak Mahindra Bank, Vasant Vihar, New Delhi

78,60,147/- TDS deducted @23.92% u/s 195 of the Income Tax Act.

the receipt of which the OWNER hereby admits and acknowledges.

a) That the balance consideration of Rs. 3,71,39,853/- (Rupees Three Crores Seventy One Lacs Thirty Nine Thousand Eight Hundred and Fifty Three Only) shall be paid

by the DEVELOPER to the OWNERS, in the following manner;

Rs. 1,71,39,853/- (Rupees being further part payment One Crores Seventy One Lacs (a.) against allowing the Thirty Nine Thousand Eight DEVELOPER to demolish, Hundred and Fifty Three Only) commence, carry out and complete the construction work of the proposed building on the terms and conditions contained herein, with all the powers and authorities of the OWNER as may be considered necessary by the DEVELOPER for obtaining the requisite permissions, sanctions from the concerned authorities for demolition/ re-

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(b.) execution/ registration of the General Power of Attorney, Special Power of Attorney deeds and other testamentary documents, inter-alia authorising the DEVELOPER/ Its Nominee to sell, transfer and handover the DEVELOPER's Allocation, to execute the title/sale deed/documents in respect of its allocation, to receive the sale consideration in its and to develop the property Rs. 2,00,00,000/- (Rupees Two Being the balance payment at the Crores Only) time of execution / registration of the sale deed in respect of the DEVELOPER's Allocation (fully described below) against handing over the possession of the same in favour of the DEVELOPER or its nominee/s, whichever is earlier.

8A. If the DEVELOPER defaults in payment of any payment on the due date, the OWNER shall be entitled to charge interest @12% per annum on the defaulted payment from the date till it is due till realization of the said amount.

18. That in view of the above arrangement arrived at between the parties hereto and in lieu of the DEVELOPER (a) redeveloping in the SAID PROPERTY at its own cost using its infrastructure facilities, Man Power, Skill & expertise (h) paying the aforesaid amount/ consideration to the OWNER, the parties shall be entitled to the following portions of the newly constructed building as under;

OWNERS' ALLOCATION		
i)	ENTIRE BASEMENT	
ii)	ENTIRE GROUND FLOOR PARKING)	(ABOVE THE
iii)	ENTIRE FIRST FLOOR	
iv)	ENTIRE SECOND FLOOR	
v)	75% SHARE OF ENTIRE STI LT AREA FOR CAR PARKJNGS, FALLING TO THE SHARE OF THE OWNER AND AFTER LEAVING THE AREA F'OR COMMON FACI LITIES	
vi)	USE OF COMMON AREAS, FACILITIES AND SERVICES	

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- vii) 77.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MEASURING 575 SQ. YDS.
- viii) TWO EXCLUSIVE LIFTS (WITH ONE EXCLUSIVE LIFT LOBBIES FOR THE BASEMENT AND GROUND AND THE SECOND FOR FIRST AND SECOND FLOOR) SOLELY FOR THE USE AND OCCUPATION OF THE OWNER AGAINST HER ALLOCATION FURTHER DEFINED BELOW

DEVELOPERS' ALLOCATION

- i) ENTIRE THIRD FLOOR (WITH EXCLUSIVE LIFT AND THE THIRD FLOOR LIFT LOBBY)
- ii) ENTIRE EXCLUSIVE TERRACE/ROOF ABOVE/UPON THE ENTIRE THIRD FLOOR &

THERE ABOVE(subject to limited right of the OWNER to have access thereto for repair/maintenance/ installation/ inspection of overhead water tank / T.V. Antenna on the Rooftop Patio Le. Mumty), which rights 'n the event of further construction on the terrace shall be shifted by the DEVELOPER or its Nominee/s, on the newly built top terrace at their own costs and expenses and to any other temporary structure during the construction phase so as to not cause any inconvenience to the OWNER/occupants and shall ensure that no damage is caused to the then existing structure of the building and normal water supply, Small Dish TV Antenna and other facilities are maintained);

ii) 25% SHARE OF ENTIRE STILT AREA FOR CAR PARKINGS, AND AFTER LEAVING THE AREA FOR COMMON FACILITIES

iii) USE OF COMMON AREAS, FACILITIES AND SERVICES

iv) 22.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE PLOT OF LAND MEASURING 575 SQ. YDS.

6. Referring to the said clauses, Mr. Kohli, learned senior counsel has contended that the petitioner is even today, ready and willing to deposit a sum of Rs.25 lakhs with this Court subject to all other claims being available to be addressed before the Arbitral Tribunal not just by the petitioner but also by the respondent herein. It was submitted that Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 the owner in any way could not be divested of its right to be in possession of the property and to the share of the development in terms of the PDA. Mr. Kohli submitted that the respondent who was merely a developer under the PDA cannot retain possession of the entire property including the part of the development which falls admittedly and undisputedly in the share of the petitioner. It is in the aforesaid backdrop that it was submitted that an interim mandatory injunction is liable to be issued.

7. Controverting the aforesaid submissions, Mr. Tiku, learned senior counsel appearing for the respondent, submitted that the prayers as made in the Section 9 petitions would clearly fall beyond the scope of interim measures that could possibly be framed. Taking the Court through the provisions made in Section 9, it was submitted that the relief of the petitioner being put into possession would clearly not fall within clauses (a) to (e) as comprised in Section 9(1). Learned Senior Counsel has also placed for the consideration of the Court the judgment rendered by a Division Bench of our Court in Krishanapatnam Port Company Limited and Chinta Investments Private Ltd. vs. Strategic Port Investments KPC Ltd. & Ors.³ and more particularly to Para 42 thereof which is extracted hereinbelow:-

"42. In the light of the legal position noticed above, it is clear that while exercising its jurisdiction under Section 9 of the Act the Court cannot ignore the underlying principles which govern the analogous power conferred under Order 39 Rules 1 and 2 and Order 38 Rule 5 of CPC. It is also necessary for the Court to satisfy itself that there exists a valid arbitration agreement between the parties and that a dispute which is referable to the arbitral tribunal has arisen. Further, as is evident from the language of Section 9 itself, an order can be made under the said provision for an interim measure of protection only in respect of the matters specified in Section 9(ii)(a) to (e). The underlying object of all the Clauses (a) to (e) of Section 9(ii) is to preserve the property which is the 2015 (218) DLT 200 Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 subject matter of dispute till the arbitral tribunal decides the dispute. The scope of relief under Section 9 therefore, cannot be extended to directing specific performance of the contract itself, though the Court must have due regard to the underlying purpose of the conferment of the power upon the Court i.e. to promote the efficacy of arbitration as a form of dispute resolution."

8. Reliance was additionally placed on yet another decision of the Division Bench of our Court in DLF Ltd. vs. Leighton India Contractors Private Ltd. & Anr.⁴ where while dealing with the scope of Section 9 of the Act and the circumstances in which an injunction could be issued when it came to invocation of Bank Guarantees, the Court had observed as follows:-

"42. From the impugned order, it is clear that the learned Single Judge had not looked at the issue from this angle and passed orders on the basis of "special equities". It is apparent that such a case has not been set up by Leighton in its application under Section 9 of the A&C Act that DLF intended to obstruct or delay the execution of any Award that may be passed against it or was in any hurry to dispose of its properties or remove itself from the jurisdiction of the court. In the absence of any averments or pleas taken, that satisfy the requirements of Order XXXVIII Rule 5 CPC, no case for an order of attachment before judgment or for furnishing of security was made out. The orders of the learned Single Judge directing furnishing of security had to be founded on Order XXXVIII Rule 5 CPC in the light of the view taken by the Supreme Court and a Division Bench of this court, which it is not.

43. At the same time, since Leighton has sought relief of either return of the encashed amount or a security furnished by DLF to the tune of an equivalent sum that they had encashed, they are in effect seeking a mandatory injunction to restore Leighton to the status quo ante. Following the decision in Adhunik Steels Ltd. (supra), even then, while disposing of an application under Section 9, principles governing grant of mandatory injunction would be relevant to decide whether directions for furnishing security are required to be passed."

9. It was then contended by Mr. Tiku that the claims concerned which have been raised are without merit and the developer cannot possibly be foisted with costs of arbitral proceedings bearing in mind 2022 (288) DLT 213 Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 the fact that despite possession of the property having been offered right from the time of completion, the petitioner on one pretext or the other refused the said offers.

10. Having noted the rival submissions, the Court at the outset finds that the provisions of the PDA clearly and in unequivocal terms established the ownership right of the petitioner. The respondent who was acting as the property developer under that agreement appears to have been inducted into the premises and the subject property for the purposes of its development. The development that was to be undertaken upon completion was to be divided as per the shares allocated to respective parties and designated as such under the PDA. This would be evident from a perusal of clause 18 which specifies that the entire basement, entire ground floor, entire first floor and entire second floor would fall in the share of the owners while the entire third floor would fall in the developer's allocation. The relevant clauses of the PDA which have been extracted hereinabove would further establish that each party had been accorded the right and liberty to sell the part of the development which fell within their respective allocations.

11. Viewed in that light and prima facie, it is manifest that the respondent could not have claimed any rights other than those which stood attached to the entire third floor of the PDA. This would of course be subject to the rider that if there be any other claims that the respondent may have with respect to the works undertaken or obligations discharged in any case would have to await consideration of the Arbitral Tribunal which is to be constituted. The respondent also cannot possibly contend or deny the ownership rights of the petitioner in the subject property.

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12. While it is true that Section 9 and more particularly clauses (a) to (e) specify the nature of interim measures that may be framed by a Court, it is well settled that they are only enumerative and clearly not exhaustive. Section 9 confers a power on the Court to pass such interim measures of protection or mould its injunctions in a manner so as to preserve the rights of parties.

13. This position was lucidly explained by the Supreme Court in its decision in Essar House Private Limited vs. Arcellor Mittal Nippon Steel India Limited⁵, a judgment which was cited by Mr. Kohli for the consideration of the Court. While dealing with the ambit of the Section 9 power which the Court could exercise, the Supreme Court in Essar House had observed as under:-

44. In *Ajay Singh v. Kal Airways Private Limited* the Delhi High Court correctly held:

"...Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles..."

45. In *Jagdish Ahuja v. Cupino Limited*, the Bombay High Court correctly summarised the law in Paragraph 6 extracted hereinbelow:--

"6. As far as Section 9 of the Act is concerned, it cannot be said that this court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection "as may appear to the court to be just and convenient", though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for MANU/SC/1165/2022 Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this court held in *Nimbus Communications Limited v. Board of Control for Cricket in India* (Per D.Y. Chandrachud J, as the learned Judge then was), the court, whilst exercising power under Section 9, "must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution." The learned Judge further observed as follows:

"Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure 1908, the rigors of every procedural provision in the Code of Civil Procedure 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case."

46. In *Valentine Maritime Ltd. v. Kreuz Subsea Pte. Ltd.*,⁷ the High Court held:--

"88. ...It is now a well settled legal position, that at least with respect to Chartered High Courts, the power to grant temporary injunctions are not confined to the statutory provisions alone. The Chartered High Courts had an inherent power under the general equity jurisdiction to grant temporary injunctions independently of the provisions of the Civil Procedure Code, 1908..."

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93. Insofar as judgment of Supreme Court in case of Raman Tech. & Process Engg. Co. (supra) relied upon by Mr. Narichania, learned senior counsel for the VML is concerned, it is held by the Hon'ble Supreme Court 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. The Hon'ble Supreme Court has further held that the purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. The said judgment of the Hon'ble Supreme Court was not in respect of the powers of court under section 9 of the Arbitration and Conciliation Act, 1996 but was in respect of power under Order 38 Rule 5 of the Civil Procedure Code, 1908 in a suit. Even otherwise, the said judgment is distinguishable in the facts of this case.

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95. Insofar as judgment of this Court delivered by the Division Bench of this court in case of Nimbus Communications Limited v. Board of Control for Cricket in India (supra) relied upon by the learned senior counsel for the VML is concerned, this Court adverted to the judgment of Hon'ble Supreme Court in case of Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125 and held that in view of the decision of the Supreme Court in case of Adhunik Steels Ltd., (supra) the view of the Division Bench in case of National Shipping Company of Saudi Arabia (supra) that the exercise of power under section 9(ii)(b) is not controlled by the provisions of the Civil Procedure Code, 1908 cannot stand. This court in the said judgment of Nimbus Communications Limited (supra) held that the exercise of the power under section 9 of the Arbitration Act cannot be totally independent of the basic principles governing grant of interim injunction by the civil Court, at the same time, the Court when it decides the petition under section 9, must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution.

96. This court held that just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Civil Procedure Code, 1908, the rigors of every procedural provision in the Civil Procedure Code, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. The principles laid down in the Civil Procedure Code, 1908 for the grant of interlocutory remedies must furnish a guide to the Court when it determines an application under Section 9 of the Arbitration and Conciliation Act, 1996. The underlying basis of Order 38 Rule 5 therefore has to be borne in mind while deciding an application under Section 9(ii)(b) of the Arbitration Act.

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104. The Division Bench of this court in case of Deccan Chronicle Holdings Limited v. L & T Finance Ltd., 2013 SCC OnLine Bom 1005 after adverting to the judgment of Supreme Court in case of Adhunik Steel Ltd. (supra), judgment of the Division Bench of this court in case of Nimbus Communications Ltd. (supra) held that the rigors of every procedural provision of the Code of Civil Procedure cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process. The Division Bench of this Court in the said judgment did not interfere with the order passed by the learned Single Judge directing the parties to furnish security so as to secure the claim of the original petitioner in arbitration by applying principles of Order 38 Rule 5 of the Code of Civil Procedure. ..."

47. In Srei Infrastructure Finance Limited v. Ravi Udyog Pvt. Ltd.⁸, the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said:--

"An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities..."

48. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

49. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC.

50. Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending Arbitral Award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal

of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail."

14. It would also be pertinent to note that in situations like the present, the Court is also not disentitled from considering the framing of mandatory injunctions in order to preserve the rights of parties as they existed prior to the disputes having arisen. The principles which govern the grant of an interlocutory mandatory injunction were enunciated by the Supreme Court in the celebrated decision of *Dorab Cawasji Warden vs. Coomi Sorab Warden*⁶ and the factors which would guide the issuance of such injunctions were explained in the following terms:-

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

1. The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(1990) 2 SCC 117 Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing
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2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

3. The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

15. Presently and prima facie the Court finds that the petitioner does appear to have a strong case which warrants recognition of her right as the owner of the property and thus consequently being entitled to the possession of the development which has been undertaken and falls within the owners allocation in terms of Clause 18 of the PDA.

16. Accordingly and for the aforesaid reasons, these petitions shall stand disposed of with the following directions.

17. The petitioner shall without prejudice to its rights and contentions in the arbitral proceedings deposit a sum of Rs.25 lakhs with the Registrar General of the Court by Friday, 10 February 2023. The aforesaid deposit shall sufficiently safeguard the interest of the respondent till the Arbitral Tribunal takes up the issues that arise for consideration. The Court has quantified the deposit to be made by the petitioner bearing in mind that the claims raised by her are far greater than those of the respondent. This is evident from the notice under Section 21 issued at her behest.

18. Subject to the aforesaid deposit being made, the petitioner shall be handed possession of the owners allocation as set forth in clause 18 of the PDA by the respondent forthwith and in any case by Saturday, Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40 11 February 2023.

19. The Court notes that since the existence of the arbitration agreement is not in dispute and parties have been unable to resolve their differences even by way of mediation, the ends of justice would warrant the constitution of an Arbitral Tribunal with this Court itself invoking its powers conferred by Section 11 of the Act.

20. Accordingly, the Court hereby appoints Mr. Shyam Sharma, Advocate, [Official Address: 287, Lawyers' Chambers Block-II, Delhi High Court, New Delhi - 110503], [Mobile No.98101 53965], [email:

law.shyam2@gmail.com] as the sole arbitrator for resolution of the disputes which have arisen.

21. The parties are directed to appear before the learned arbitrator, as and when notified. This is subject to the learned arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

22. The fees of the arbitrator shall be decided according to the Fourth Schedule of the Act.

YASHWANT VARMA, J.

FEBRUARY 09, 2023 rsk Digitally Signed & O.M.P.(I) (COMM.) 13/2023 By:NEHA Signing Date:09.02.2023 19:39:40