M/S Jain Housing & Constructions ... vs Mr.V.Ramaiah on 22 January, 2009

Author: M.Sathyanarayanan

Bench: D.Murugesan, M.Sathyanarayanan

In the High Court of Judicature at Madras

Dated:- 22-01-2009

Coram:

The Honourable Mr.Justice D.MURUGESAN
and
The Honourable Mr.Justice M.SATHYANARAYANAN

Original Side Appeal No.384 of 2008
and
C.M.P.No.1 of 2008

M/s Jain Housing & Constructions Limited,
rep. by its Managing Director Mr.Sandeep Mehta,
No.11, Somasundaram Street,
T.Nagar, Chennai - 17. .. Appellant

Versus

1. Mr.V.Ramaiah,
No.29/15, Neelakanda Mehta Street,
T.Nagar, Chennai-17.

2. M/s. City Lando Corporation,
rep. by its Managing Partner,
Mr.V.M.Rajendran,
No.5, 8th Trust Cross Street,
Raja Annamalaipuram,
Chennai - 28. .. Responden

Original Side Appeal filed under Ordr XXXVI Rule 11 of Original Side Rules read

For Appellant .. Mr.T.V.Ramanujan, S.C. for

Mr.R.Mohan

For Respondents .. Mr.R.Muthukumaraswamy, S.C. for
Mr.R.Rajagopal, for R.1.
Mr.P.S.Raman, S.C. for
M/s. V.Pushpa and Mr.R.Palanisamy, for R.2.

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JUDGMENT

M.SATHYANARAYANAN, J The appellant is the applicant in O.A.No.807 of 2008 filed by him under Section 9 of Arbitration and Conciliation Act, 1996 (In short Arbitration Act). Originally an order of interim injunction was granted on 29.7.2008 in O.A.No.807 of 2008 by this Court in favour of the appellant. The first respondent herein filed an application in A.No.3810 of 2008, the second respondent herein filed an application in A.No.3811 of 2008 for vacating the interim order. This Court vide a common order dated 19.8.2008 had vacated the interim order granted in O.A.No.807 of 2008 and aggrieved by the same, the applicant therein, had preferred this appeal.

2. The facts which are necessary for the disposal of this appeal are as follows:-

> For the sake of convenience, the array of parties as referred to in O.A.No.807 of 2008 is adopted here also.
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> In the affidavit filed in support of O.A.No.807 of 2008, the applicant averred that the first respondent had obtained power of attorney on 17.4.1997 from the second respondent and their partners for the purpose of selling, developing, submitting applications for planning permission, reclassification, layout etc., pertaining to their property situated at 98, Porur Village, comprised in R.S.No.25/1 forming part of layout in LPDM/DTP No. 277 of 1973, admeasuring about 2.95 acres of land. The first and second respondents and the partners of the second respondent had also entered into joint development agreement dated 14.4.1997 to develop the property by putting residential flats on the said property.

3. In pursuant to the said understanding, the second respondent had handed over all the documents and title deeds pertaining to the property to the first respondent, who in turn, submitted applications to CMDA and the local body for the purpose of getting planning permission etc., to put up construction on the land. The ratio agreed between them with regard to the joint development was, originally 70 : 30, which has been subsequently revised to 62: 38 which means that the first respondent shall construct and allot 38% of the constructed area to the second respondent, who in turn will convey 62% of the undivided share of the land together with building proportionate to them, in favour of the party of the first part.

4. Since the applicant doing housing constructions and experience in the said field, the first respondent agreed to entrust the development of the property for the purpose of putting up residential flats on the said lands. Accordingly, a Memorandum of Understanding dated 14.7.2006 came to be entered into between the applicant and the first respondent. As per the terms of the said MOU, the first respondent requested the applicant to advance a sum of Rs.200.00 lakhs for the

purpose of settling the loan to M/s Global Trust Bank Ltd., Mylapore Branch, which was subsequently amalgamated with Oriental Bank of Commerce. It was also agreed that the first respondent shall be entitled to be a fixed profit of Rs.300.00 lakhs apart from reimbursing the land premium of Rs.65.00 lakhs paid to the land owners viz., the second respondent and the said amount shall not carry any interest.

5. In terms of the said MOU, the applicant paid 4 Pay Orders dated 14.7.2006 amounting to a sum of Rs.85.00 lakhs, 40.00 lakhs, 40.00 lakhs and 35.00 lakhs respectively, in all aggregated to a sum of Rs.2.00 Crores, drawn in favour of Karur Vysa Bank. It was also agreed that the said amount of Rs.2.00 Crores should be credited towards advance payment with regard to the balance payment payable by the applicant. On the date of signing MOU, Xerox copies of above said 4 Pay Orders have been handed over to the first respondent and on delivering the original title deeds of the schedule mentioned property with appropriate No Due Certificate from the Oriental Bank of Commerce.

6. In terms of Clause 9 of the said MOU, the applicant took steps to take measurements, dig test pits etc., and also done initial spade work for the purpose of putting up construction. Later on the original Pay Orders have been handed over to the first respondent, who realised 3 Pay Orders aggregating to a sum of Rs.115.00 lakhs on 4.12.2006. The confirmation of the said payment was also intimated to the applicant by their bank vide letter dated 24.03.2007.

7. The first respondent in spite of realisation of Rs.115.00 lakhs during December 2006, has not evinced keen interest to proceed further in terms of the Memorandum of Understanding and therefore, the applicant sent a letter dated 24.4.2007 with copies marked to the second respondent and their partners, requesting the first respondent to fulfil his obligation in terms of the said MOU. The said letter was followed by an E.Mail dated 25.4.2007. The applicant later on came to know that the first respondent has not encashed the Pay Order for a sum of Rs.85.00 lakhs to be payable to Oriental Bank of Commerce to clear the dues for the purpose of getting back the original title deeds.

8. However, to the shock and surprise of the applicant, the first respondent without informing the applicant, started putting up constructions by laying foundations and erecting columns and fearing that the rights and interest of the applicant are put in to peril, had filed an application in O.A.No.807 of 2008 and obtained interim orders on 29.7.2008, restraining the respondents from doing constructions for the purpose of development, alienating or encumbering the property situated in R.S.No.25/1, admeasuring about 2.95 acres situated in Porur Village, pending disposal of the arbitral proceedings in terms of MOU dated 14.7.2006.

9. The first respondent has filed his counter and also filed an application in A.No.3810 of 2008 to vacate the said interim order. In the counter affidavit of the first respondent, the following objections have been taken in respect of maintainability of the application in O.A.No.807 of 2008 filed under Section 9 of the Arbitration Act:

> (a)The suit property is situated outside the jurisdiction of this Court and hence the District Court, Chengalpattu will alone have jurisdiction to entertain the said petition.

(b)MOU dated 14.7.2006 entered into between the applicant and the first respondent is not an equity contract.

(c)The Applicant is a company registered under the Companies Act and that the MOU was not attested by the Company Secretary of the Company or any authorised Officer of the Company had signed the said MOU and the Common Seal of the Company was also not affixed, which would show that the MOU was never intended to be concluded contract or agreement.

(d)Since MOU deals with the immovable property and that it has not been registered under Registration Act, it is not enforceable.

(e)The original of MOU dated 14.7.2006 has not been filed and as such the application under Section 9 of the Arbitration Act is not maintainable.

(f)The application is liable to be dismissed for mis-joinder and non-joinder of parties and that the second respondent is not a party to MOU, which contains the Arbitration Clause and therefore, the application is not maintainable.

10. On the merits of the case, the first respondent contended that the MOU dated 14.7.2006 intended to be a preliminary agreement and as a prelude to enter into a further/final agreement and admittedly no final agreement has been entered into between the applicant and the first respondent.

11. As regards the receipt dated 14.7.2006, it is stated by the first respondent that it is a forged and fabricated one to mislead this Court and he denied the execution of such a receipt. With regard to the averment that in pursuant to MOU the applicant was allowed to enter into schedule mentioned property and done soil testing etc., it is stated by the first respondent that the said clause come into operation only on execution of the joint development agreement and since it has not come into existence, the applicant cannot claim any right.

12. It is further averred by the first respondent that since the land owners had not agreed to the proposed joint development between the first respondent and the applicant, the amount of Rs.85.00 lakhs given by the applicant for settling the dues of Oriental Bank of Commerce has not been presented and it was also returned during second week of January, 2007 to the applicant.

13. The first respondent further stated that it was made very clear to the applicant that the MOU was entered into by him with the applicant only in his individual capacity and not as power agent of the land owners and since MOU could not be taken forward for want of consent from all the land owners, it has become inoperative.

14. The first respondent also averred that on 9.1.2008, he informed the applicant that he was ready to repay a sum of Rs.115.00 lakhs paid under three Pay Orders to him and realised by him along with a sum of Rs.20.00 lakhs as additional charges, but it was refused to be received by the applicant and it also demanded a huge compensation. The first respondent further averred that the

application under Section 9 of the Arbitration Act came to be filed nearly after two years and the construction is underway and it has also reached the level of stilt and sale of substantial flats have also been done. In that connection, an additional affidavit was also filed by the first respondent with regard to the present status of construction.

15. The second respondent has also filed his counter and also took out an application in A.No.3811 of 2008 for vacating the interim orders granted in O.A.No.807 of 2008.

16. In the counter affidavit filed on behalf of the second respondent, it is averred that the second respondent had purchased an extent of 14 cents only by way of sale deed dated 15.3.1995 and the said land was a part of larger extent which came to be conveyed by the IX Assistant City Civil Judge, Chennai in terms of decree for specific performance.

17. It is further averred by the first respondent that with regard to the proposal for joint development, by the first respondent with the applicant, it was not accepted and it has been made very clear that the construction cannot be jointly done by the first respondent with the applicant. The first respondent was not authorised to enter into any MOU with any third party or builder for joint development.

18. It is also averred in the counter affidavit of the second respondent that it is not a party to the MOU and therefore the clause including the Arbitration clause will not bind them. As regards the balance of convenience, it is averred that the construction has reached the level of stilt, and since it is a time bound construction programme, any disturbance would affect the stipulated and timely completion of the building and therefore, the second respondent prayed for vacating the interim orders.

19. The applicant had filed its reply to the said counter affidavits contending among other things that they were informed by the first respondent that he has obtained oral consent from all the land owners for the proposed development to be carried out on the above said property and substantially a sum of Rs.2.00 Crores were also advanced in favour of the first respondent and that the first respondent was authorised by all the land owners to do any activities which included construction.

20. The learned Judge after taking into consideration the averments made in the application, counter affidavits and reply affidavit and after hearing the submissions of the respective counsel, held that in the absence of the parities who are not parties to the MOU, the application is not maintainable.

21. It has been further held that the MOU is not executed between the first respondent and the applicant under the authority given to the first respondent by the second respondent and others and in any event, the MOU was executed by the first respondent in his individual capacity only and not on behalf of the land owners. The learned Judge further held that there are materials to show that at any point of time, the second respondent empowered the first respondent to go ahead with the engaging of services of any third party in contrary to the terms of the agreement entered into between the first and second respondent and other land owners. It has been categorically held by

the learned Judge that when the second respondent owns only 14 cents, the applicant is not entitled to seek interim orders in respect of the entire extent of 2.95 acres in which the right and interest of the other land owners are there. The learned Judge for the said reasons and other reasons, had vacated the interim orders and dismissed the O.A.No.807 of 2008 and consequently, allowed the applications filed by the respondents in Application Nos. 3810 and 3811 of 2008. The present appeal is preferred by the applicant challenging the dismissal of his application in O.A.No.807 of 2008.

22. Heard the submissions of Mr.T.V.Ramanujun, learned senior counsel appearing for Mr.R.Mohan-learned counsel appearing for the appellant, Mr.R.Muthukumarasamy, learned senior counsel appearing for Mr.S.R.Rajagopal, learned counsel appearing for the first respondent, Mr.P.S.Raman, learned senior counsel appearing for M/s. V.Pushpa and V.Palanisamy, learned counsel appearing for the second respondent and also perused the materials available on record in the form of typed set of documents.

23. In terms of the decree obtained in O.S.No.1951 of 1993 filed for specific performance of agreement of sale dated 5.5.1978 (Registered as document No.1376/1995 dated 15.3.1995, came to be executed by the learned XV Assistant City Civil Judge, in-charge of IX Assistant City Civil Judge in favour of City Lando Corporation (second respondent), M.N.Mark Pillay, R.Joseph Arulanandam, S.Jesu Viyana Raj, S.Charles, V.R.F.Paulraj,V.R.Pushpa Raj and Tmt.Malathi Xavier. As per the schedule annexed to the said sale deed, the above said purchasers got the following extent:

> Schedule Purchasers Extent "B" City Lando Corporation 0.14 cents "C" M.N.Mark Pillay 0.35 cents "D" R.Joseph Arulanandam 0.44 cents "E" S.Jesu Viyanna Raj 0.24 cents "F" S.Charles 0.44 cents "G" V.R.F.Paul Raj 0.45 cents "H" V.R.Pushpa Raj 0.45 cents "I" Mrs.Malathi Xavier 0.44 cents
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> ---
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> Total 2.95 acres
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> The second respondent firm was represented by Thiru.V.M.Rajendran in his capacity as the Managing Director. Some of the purchasers viz., V.R.F.Paul Raj, and V.R.Pushpa Raj are sons of V.M.Rajendran.

24. The above said parties after getting the sale deed dated 15.3.1995, entered into an agreement for development dated 14.4.1997 with the first respondent. Clause No.19 of the said joint development agreement as is extracted below:-

> "19. The Party of the SECOND PART/PROMOTER speifically agrees for the following:
>
> a) To use good building materials to the entire construction.

b) To construct the entire construction floorwise and to complete the work simultaneously in all Flats/Apartments floorwise.

c) Not to make the OWNERS/Parties of the FIRST PART liable for any loss or damage whatever that may be in this scheme.

d) Not to make the OWNERS/Parties of the FIRST PART liable for any damages or claim from the sub-contractors or workmen or suppliers of building materials etc.

e) Not to deviate from the plan approved by the CMDA, Corporation of Chennai or Local Municipal or Panchayat Authority.

f) To take the entire care and sole responsibility for the construction work which include the responsibility, liability towards the cost of construction, building materials, labours, workmen, sub-contractors and engineers.

g) To perform the entire undertaking given above as per specifications mentioned in Annexure hereunder and to perform them without committing any default or breach.

h) Not to assign this work to any third Party. "

As per sub clause (h) of clause No.19, the first respondent herein is directed not to assign the work of the development of the property to any third party. Each of the above said parties had also given individual power of attorney dated 17.4.1997 in favour of the first respondent pertaining to their individual share. The above said parties had also executed a Memorandum of gift deed dated 13.11.2006 in favour of the Executive Officer, Porur Special Town Panchayat agreeing to transfer the roads and other open spaces described in the schedule annexed to the said deed in favour of the said local body. It was also followed by a open reservation gift deed dated 4.1.2007 executed by the above said persons in favour of CMDA, wherein they conveyed the land admeasuring 1026.28 sq.mts. in S.No.25/1A towards open space reservation.

25. The first respondent in terms of the agreement for development dated 14.4.1997, had made necessary application to the CMDA and other local body for planning permission etc. The contention put forth by the learned senior counsel appearing for the appellant that the Memorandum of Understanding dated 14.7.2006, extracted between the applicant and the first respondent is complete in all respects and therefore it is enforceable in our considered opinion, is unsustainable. It is useful to refer clause 11 and 12 of the Memorandum of Understanding dated 14.7.2006, which is extracted below:-

"11. Both the parties hereto agree that a Detailed Agreement or such other documents shall be executed between themselves upon obtaining approvals from CMDA or before the commencement of the construction, to be mutually decided.

12. The other terms such as, identifying the flats to be handed over to the landowner through the Party of the First Part shall also be decided before execution of a detailed agreement by the parties herein. "

26. A perusal of the above clause would reveal that the applicant and the first respondent had agreed that a detailed Agreement or such other documents shall be executed between them upon obtaining approvals from CMDA or before commencing of the construction to be mutually decided and other terms regarding identification of flats to be handed over to the land owners through the applicant shall also be decided before execution of a detailed agreement by the said parties. Clause No.13 also makes it clear that the Memorandum of Understanding dated 14.7.2006 shall remain in force until the detailed agreement is entered into between the applicant and the first respondent subject to the party of second part handing over the advance of Rs.200.00 lakhs to the first respondent to settle the liabilities. Admittedly, no further/detailed agreement came to be executed between the first respondent and the applicant. No doubt, the applicant had paid Rs.200.00 lakhs by way of four separate Pay Orders and a Pay Order for a sum of Rs.85.00 lakhs pertaining to the settlement of dues to the Oriental Bank of Commerce after getting back the original title deeds of the property. Admittedly, the said Pay Order was not realised and according to the learned counsel appearing for the first respondent the said Pay Order was also returned to the applicant. It is also admitted by the first respondent that he realised a sum of Rs.115.00 lakhs during December 2006 as during November 2006, the original Pay Orders have not been given to him. According to the first respondent, since the land owners have not agreed for joint development with the applicant and that the Memorandum of Understanding dated 14.7.2006 was executed by him in his individual capacity, he was not in a position to proceed further in terms of the said agreement. He has also made offer as early as on 9.1.2008 to return a sum of Rs.115.00 lakhs and also a sum of Rs.20.00 lakhs as additional charges but it was refused to be received by the applicant on account of demand of huge compensation, the said averment is available in paragraph No.19 of the counter affidavit filed by the first respondent.

27. A perusal of the sale deed dated 15.3.1995 executed by the City Civil Court in favour of the second respondent and 8 other persons in pursuant to the decree for specific performance would reveal that each of the persons owned separate extent of land which in all aggregating to 2.95 acres in different settlees. In so far as the second respondent is concerned it owns only 14 cents. As per the terms of the development agreement dated 14.4.1997 entered into between the second respondent and 7 others and the first respondent, the first respondent cannot assign the work of development to any third party. In the light of sub-clause No.(h) of clause No.19 of the agreement for development dated 14.4.1997, we find no difficulty in arriving at a finding that the Memorandum of Understanding was entered by the first respondent with the applicant in his individual capacity and admittedly the other land owners are not parties of the said agreement and that the second respondent owns 14 cents of land out of 2.95 acres. Therefore, the Memorandum of Understanding dated 14.7.2006 entered into between the first respondent and the applicant in no way binds the land owners. That apart, the arbitration clause contained in the said MOU cannot be invoked against the land owners as admittedly they are not parties.

28. In this connection, it is useful to refer the following judgments:-

(a) (2003) 5 SCC page 531- Sukanya Holdings (P) Ltd. vs. Jayesh H.Pandya and another.

(b) (2007) 5 SCC page 510 - India Household and Health care Ltd. vs. LG Household and Healthcare Ltd.

29. The facts of the decision reported in (2003)5 SCC page 531-Sukanya Holdings (P) Ltd. vs. Jayesh H.Pandya and another are that the appellant therein filed an application under Section 8 of the Arbitration Act and it was opposed by the first respondent therein by contending that the subject matter of the suit is not between the contracting parties and the reliefs are claimed not only against the respondents 1 and 2 who are contracting parties but are claimed against the remaining 23 parties who are purchasers/so called tenants of the disputed flats. The High Court of Bombay has rejected the application filed under Section 8 of the Arbitration Act and the matter was taken up to the Hon ble Supreme Court of India, by way of an appeal and it has been held as follows:

" For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the Act, the judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the Arbitral Tribunal, if: (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that the Arbitration Act does not oust the jurisdiction of the civil court to decide the dispute in a case where parties to the arbitration agreement do not take appropriate steps as contemplated under sub-sections (1) and (2) of Section 8 of the Act.

Secondly, there is no provision in the Act when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.

Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, under Section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the court may refer the same to arbitration provided that the same can be separated from the rest of the subject-matter of the suit. The section also provided that the suit would continue so far as it related to parties who have not joined in such application.

The relevant language used in Section 8 is: "in a matter which is the subject of an arbitration agreement". The court is required to refer the parties to arbitration.

> Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words "a matter" indicate that the entire subject-matter of the suit should be subject to arbitration agreement.
>
> The next question which requires consideration is - even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before the judicial authority is not allowed.
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> Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums."

For the said reasons, the Hon ble Supreme Court of India, has dismissed the said appeal.

30. The facts pertaining to the decision reported in (2007) 5 SCC page 510 - India Household and Health care Ltd. vs. LG Household and Healthcare Ltd are that an application was filed under sub-sections (5) and (6) of Section 11 of the Arbitration and Conciliation Act 1996 for appointing an arbitrator, since the respondent has failed to do so. The said petition was opposed by the respondent contending that the said agreement was preceded by an MOU dated 1.11.2003 and the said MOU and the license agreement dated 8.5.2004 are vitiated by fraud. This Court has granted interim orders which were also made absolute. The Hon ble Supreme Court of India in the said decision has considered Sukanya Holdings(P) Ltd., vs. Jayesh H.Pandia (cited supra) and also taken into consideration Rashtriya Ispat Nigam Ltd. vs. Verma Transport Co., reported in (2006)7 SCC 275 and approved the Sukanya Holdings Pvt. Ltd., case reported in (2003)5 SCC 531. The Supreme Court of India in a decision reported in 2006(8) Supreme page 575 - Sandeep Kumar & Others vs. Master Ritesh & Others, took a similar view. In the light of the ratio laid down in the said decisions the arbitration clause contained in MOU dated 14.7.2006 will not bind the land owners and therefore the application under Section 9 of the Arbitration Act is not maintainable.

31. The power of attorney executed by each of the land owners was only for the purpose of effecting sale of an undivided share of 70% but it cannot bind the first respondent or the land owners.

32. It is vehemently contended by the learned senior counsel appearing for the first and second respondents that since the property is situated outside the territorial jurisdiction of this Court, an application under Section 9 of the Arbitration Act cannot be maintained. The first respondent has admitted the execution of Memorandum of Understanding dated 14.7.2006 and specifically averred in his counter that the MOU was entered in his personal capacity and since the land owners had not consented for joint development with the applicant, he could not proceed further in terms of the said MOU. Admittedly, the said MOU came to be entered into at Chennai and the Arbitration clause goes with the terms of the agreement and not with regard to the location of the property. Therefore, we are of the view that application filed under Section 9 of the Arbitration Act for the purpose of territorial jurisdiction, is maintainable before this Court.

33. In view of the rival contentions, we have to see as to whether the applicant is prima facie entitled for interim orders. It is a known position of law that for granting interim relief under Section 9 of the Arbitration Act, the applicant has to satisfy the similar ingredients for grant of interim orders under Order 39 Rule 1 and 2 of CPC. The right of the applicant if any, flows from the Memorandum of Understanding dated 14.7.2006 and we have already recorded the reasons that the Memorandum of Understanding is not a concluded agreement as clause No.11 to 13 would state about the execution of a detailed agreement or such other document between the first respondent and the applicant. No doubt, the first respondent has realised three Pay Orders amounting to Rs.115.00 lakhs and the offer made by him to be refund the said sum along with additional charges of Rs.20.00 lakhs was rejected by the applicants. In the absence of the detailed agreement or such other agreements between the first respondent and the applicant, no rights accrued in favour of the applicant for the development of the property except to the extent that he is entitled to a sum of Rs.115.00 lakhs with interest.

34. In view of the averments in paragraph No.19 of the counter affidavit of the first respondent, we direct the first respondent to pay a sum of Rs.115.00 lakhs with additional charges of Rs.25.00 lakhs in aggregating to a sum of Rs.140.00 lakhs to the applicant by way of Pay Order or Demand Draft and it is open to the applicant to receive the same without prejudice to his rights.

35. As regards the delay in commencing of arbitral proceedings, we are not expressing any opinion as it requires factual adjudication.

36. In the result, the Original Side Appeal is dismissed, confirming the order dated 19.8.2008 passed in O.A.No.807 of 2008. But in the circumstances, there will be no order as to costs.

37. The observations/findings given above are only for the purpose of disposal of this appeal and it cannot be taken as an expression of any opinion touching upon the merits of the contentions to be put forth by the parties in appropriate legal proceedings.

(D.M.J) (M.S.N.J) 22.01.2009 Index:Yes/No Internet:Yes/No gr.

D.MURUGESAN, J and M.SATHYANARAYANAN,J gr.

DRAFT JUDGMENT IN

22.01.2009