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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 23, 2009
Date of Order: September 03, 2009

+ OMP No.21/2009

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03.09.2009

**M/S NATIONAL AGRICULTURAL COOPERATIVE
MARKETING FEDERATION OF INDIA LTD.(NAFED)**

... Petitioner

Through : Mr. A.K. Singh with Ms. Gitanjali Suraj
& Mr. S.K. Singh, Advocates

Versus

M/S ROJ ENTERPRISES (P) LTD & ORS. Respondents

Through: Mr. Krishnam Venugopal with
Mr. Abir Phukan, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. By this application under Section 9 of the Arbitration and Conciliation Act, petitioner has sought an injunction against respondents no. 1 and 2 restraining them from selling, alienating, transferring or creating third party interest in property no. A-8, Saket, 45/1+2/A, Karve Nagar, Opposite Patwardhan Baug, Pune and property of respondent no. 2 bearing house no. R-II, 8/8A, Swapna Nagar, Pune, Maharashtra. The petitioner has submitted that the petitioner and respondent had signed an agreement dated 23rd March, 2004 which was followed by a subsequent agreement

dated 30th April, 2004 whereunder the petitioner had advanced a loan/financial assistance of Rs.21.02 crores to the respondent and the respondent committed breach of the agreement by not adhering to the terms of the agreement and an arbitral dispute had arisen within the terms of Clause 13 of the agreement dated 24th March, 2004 which the petitioner has invoked and the petitioner is claiming interim relief under this petition.

2. The respondent in reply has stated that this Court has no jurisdiction to entertain the petition since the material agreement between the parties was dated 30th April, 2004. The MOU signed between the parties on 28th March, 2004 in Delhi was followed by the agreement dated 30th April, 2004 and it was this agreement under which the financial assistance was given to the respondent and parties acted and proceeded on the basis of this agreement. MOU had become irrelevant. The agreement dated 30th April, 2004 was signed at Pune. The financial assistance was given to the respondent at Pune. The entire cause of action had taken place at Pune and in view of Section 2(1)(e) of the Arbitration and Conciliation Act, the petition under Section 9 was not maintainable before this Court. It is also submitted that the respondent had filed the petition under Section 9 before the District Judge, Pune, seeking certain interim reliefs against the petitioner. The petitioner had filed reply to that petition of the respondent and in view of Section 42 of

the Arbitration and Conciliation Act, the Court in Pune alone would have the jurisdiction to entertain the subsequent petition.

3. It is not disputed that the initial MOU dated 28th March, 2004 executed between the parties was succeeded by a specific agreement dated 30th April, 2004 executed at Pune between the petitioner and the respondent and under this agreement, the petitioner had agreed to finance the purchases made by the respondent. The agreement contains detailed terms and conditions of these finances. It is also not disputed that the money was provided under this agreement to the respondent at Pune. No doubt the arbitration clause even in the agreement dated 30th April, 2004 provides that in case of any dispute and differences between the parties, the same shall be referred to Indian Arbitration Council in New Delhi. However, a petition under Section 9 is maintainable before a Court as defined under Section 2(1)(e) and as per Section 2(1)(e) only that Court can entertain an application under Section 9 if all the facts stated in the application were considered as facts of the suit, the suit had been maintainable before the Court. In this case the agreement was executed at Pune, the respondent is based at Pune, the finance was provided to the respondent at Pune, the breach of the agreement had taken place at Pune and the attachment of property situated in Maharashtra is sought, thus the entire cause of action in this case had taken place in Pune. Even if a fraction of cause of action has taken place in Delhi, the Court of

jurisdiction under Section 2(1)(e) would be the Court at Pune and the Court at Delhi is not the proper Court for entertaining the application under Section 9 of the Arbitration and Conciliation Act.

4. It is also not disputed that the respondent had filed an application under Section 9 before the District Judge at Pune on 29th August, 2008 much prior to the present application and this application was entertained by the Court at Pune. It is also not disputed that because of the dishonour of the cheque issued by the respondent, the petitioner initiated proceedings against the respondent under Section 138 of the Negotiable Instruments Act before Judicial Magistrate Ist Class of Pune. Under these circumstances, I consider that in view of Section 42 of the Arbitration and Conciliation Act, 1996 only the Court at Pune would have jurisdiction to entertain this petition and the Court at Delhi is not the Court of competent jurisdiction. This petition under Section 9 is therefore hereby dismissed for want of jurisdiction. The petitioner however, would be at liberty to prefer an appropriate petition before the Court at Pune.

September 03, 2009
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SHIV NARAYAN DHINGRA J.