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TURNER MORRISON LAND LIMITED

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Lalit Gupta, Mr. Sindhu Sinha &
Mr. Nikhil Bhalla, Advocates.

SMT. PARVATI DEVI & ANR.

Through: Dr. Shyamlha Pappu, Sr. Advocate with
Mr. R. Krishnaamorthi & Mr. K.K.
Singh, Advocates.

OMP No.117/2007

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HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Both petitions under Section 9 of the Arbitration Act, 1996 for interim measures are for consideration. The petitions though by different petitioners against the same respondents have inter-connected facts. The petitioner in OMP No.73/2007 claims

rights in immovable property situated at Plot of land bearing No.B-25, Qutab Institutional Area, New Delhi allotted on leasehold basis to the respondent No.2 Society. The respondent No.1 is the President of the said Society. It is the case of the petitioner that the respondent Society was unable to raise construction on the aforesaid land, perpetual lease whereof was under threat of forfeiture; that the respondent Society entered into an agreement with the petitioner in OMP No.117/2007 whereunder the petitioner in OMP No.117/2007 was to at its own cost raise construction on the said land and in lieu thereof entitled to certain rights in the said land; that the rights under the said agreement were assigned with the consent of the respondent Society in favour of the petitioner in OMP No.73/2007; that on completion of the construction, the petitioner (in accordance with the agreement) has been in possession/control/constructive possession of the entire aforesaid built up property except an area of about 13,500 sq. ft. located on the ground floor for self use of the respondent Society and 2,188 sq. ft. in the basement for parking of cars. It is the admitted position that the building is lying sealed on account of misuse. OMP No.73/2007 is filed to restrain the respondents therein from occupying or using any portion of the aforesaid property except the area of 13,500 sq. ft. on the ground floor and 2,188 sq. ft. in the basement for parking cars and for restraining the respondents from transferring, leasing, licensing, mortgaging, encumbering the portions of the property which were in possession/control as aforesaid of the petitioner.

2. The petitioner in OMP No.117/2007 was carrying on maintenance services in the entire property. The interim measure claimed therein is of restraining the respondents from using the assets of the petitioner in the said premises installed for the

purposes of carrying out the maintenance activity and from removing or alienating the said maintenance assets/equipment and from providing the maintenance services in the property.

3. The senior counsel for the respondents has contested the petition inter-alia on the ground of locus of the petitioner in OMP No.73/2007; the assignment in favour of the said petitioner is controverted. It is further argued that neither is there any arbitration agreement between the parties nor any disputes between the parties and the disputes, if any, are long dead one and not live one. Reliance is also placed on ***Premji Ratansey Shah Vs. Union of India*** JT 1994 (6) SC 585 for canvassing the proposition that injunction cannot be issued in favour of a trespasser and against a true owner and on ***Union of India Vs. Momin Construction Company*** (1997) 9 SCC 97 to contend that the disputes raised are barred by time.

4. As far as objection by the senior counsel for the respondents to the arbitrability is concerned, the senior counsel for the petitioner during the hearing has urged that the respondent Society had instituted a suit against the petitioners in these petitions; the petitioners herein applied under Section 8 of the Arbitration Act, 1996. The said application of the petitioners was allowed. Similarly, it is contended that a petition under Section 11 of the Act was also preferred and which was also taken up for consideration along with the application under Section 8 in the suit. The said application was also allowed and Justice A.B. Saharia (Retd.) has been appointed as the arbitrator, arbitration before whom is stated to be underway. It is the contention of the senior counsel for the petitioner that all the objections taken by the senior counsel for the respondents before

this court as to arbitrability were taken by the respondents in the aforesaid two proceedings also; notwithstanding that the application under Section 8 and the petition under Section 11 were allowed and the arbitrator appointed.

5. It is not controverted by the senior counsel for the respondents that the pleas raised before this court as to the arbitrability were also raised in the proceedings aforesaid and were not accepted. The only argument is that review has been applied for of the order allowing the applications under Section 8 and Section 11 of the Act and arguments whereon have been heard and order reserved.

6. Till the review is allowed, the order on the application under Section 8 and Section 11 is final. The question as to arbitrability having been gone in those proceedings, need not be gone into again in these proceedings. The contentions of the respondents opposing the petition on these grounds are therefore negatived.

7. As far as the merits of granting the interim measures are concerned, the senior counsel for the respondents does not dispute that since the completion of the construction of the building and till sealing, the portions of the property with respect whereto interim measures are claimed were in the control and possession of the petitioners. It is also admitted that the maintenance services were being carried out by the petitioner and the petitioner had installed their plant & equipment for the said purposes. The plea in this regard is that pursuant to sealing, the petitioner had vacated the premises. It is contended that the petitioners having vacated are now not entitled to any interim relief.

8. Per contra, the senior counsel for the petitioner has urged that as per the scheme now brought by the Government/Land Owning Agency, sub-letting has been permitted to a large extent and the property is capable of being used.

9. In my view, once it is admitted that the petitioners were in control and possession of the portions with respect where to interim measures are claimed, till sealing, the factum of sealing by the Government Agency cannot interfere with the rights, if any, of the petitioner. Such action of a third party cannot vest any advantage in the respondent. At this stage, it is not deemed appropriate to go into the merits of the respective case. All that can be said is that the courts have taken notice of such transactions in Delhi and at least in ***Ansal Property & Industries Private Limited Vs. Anand Nath*** MANU/DE/0824/1991 the true nature of such transactions was also gone into. I thus find the petitioners to have made out a prima-facie case. The rights sought to be protected being with respect to immovable property, cannot be compensated in money. The balance of convenience is also found to be in granting the interim relief claimed.

10. The petitions are accordingly allowed. The respondents are restrained from occupying or using and/or from alienating, encumbering or parting with possession of property No.B-25, Qutab Institutional Area, New Delhi save the portion of 13,500 sq. ft. on the ground floor of the said property and 2,188 sq. ft. in the basement of the said property. The respondents are also restrained from using or removing the equipment, plant & machinery of the petitioner for the purposes of carrying out maintenance services in the said property and from carrying out the said services themselves.

11. It is sad that such valuable commercial property is being wasted for the last so many years. Though no claims in that respect have been made but I clarify that upon an application in this regard being made, the Arbitral Tribunal stated to have been already constituted shall attempt to make provision for allowing use/commercial exploitation of the said property so that pending the resolution of disputes between the parties the property can be put to optimum use.

The petitions are accordingly disposed of.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 23, 2009
PP**