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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. 239/2009

CITIFINANCIAL CONSUMER FINANCE INDIA LTD

..... Petitioner

Through:

versus

KANNEGONI ANAND S/O K. NARASIMHA

..... Respondent

Through:

**CORAM:
JUSTICE SHIV NARAYAN DHINGRA**

**O R D E R (oral)
01.05.2009**

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This application has been made by the petitioner under Section 9 of the Arbitration and Conciliation Act seeking an injunction against the respondent that the respondent be restrained from selling, disposing of, alienating, transferring or creating any encumbrance on the property bearing House No.16-11-578 Old 10-35/A Plot No.28, S.No-274/1 Patel Nagar, Gaddianaram, Hyderabad. The prayer is also made that this Court should appoint a receiver in respect of the property mentioned above and should grant necessary police aid to the petitioner to take possession of this property. The petitioner has relied upon an Arbitration Clause in the Home Loan Agreement, entered into between the parties, which

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physical file have been compared and
the digital data is as per the physical
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provides that the dispute shall be resolved through arbitration and
the place of the arbitration shall be Delhi.

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The petitioner also relied upon ***Paramita Constructions Private Ltd. vs. UE Development India (P) Ltd.***

2008(3) ALT 440 wherein Andhra Pradesh High Court observed as under:-

"11. Definition of "the Court" as contained in Section 2(e) of the act can be split into three parts: main part, inclusionary part and exclusionary part. Main part defines "the Court" as Principal Court of original jurisdiction in a District, which has jurisdiction to decide subject matter of arbitration. Inclusionary part specifically includes High Court having original jurisdiction over subject matter. Exclusionary part excludes any Civil Court of a grade inferior to Principal Civil Court or any Court of Small Causes. Understanding Section 2(e) is very important for two reason. Any award can be set aside, on an application, only by a Principal Civil Court, i.e., Principal District Court, and against such award appeal would lie to High Court is situated. Therefore, Principal District Court having jurisdiction over subject matter of a suit is alone "the Court" for the purpose of the Act.

12. There is no dispute or denial that parties are at liberty to agree on the place of arbitration in the absence of which it is for arbitral tribunal to determine the place of arbitration. It is always necessary for the parties to agree on the place of arbitration by indicating in the agreement or can it be derived from other clauses or agreement? The place of arbitration and subject matter of arbitration are not one and same. The parties to the agreement may accept arbitration to be held at a place or at a country other than place where subject matter is situated. In such an event, it is only the Court where subject matter is situate, which has jurisdiction, and it is only that "the court" which exercises control over such Principal Civil Court. Visualizing such situations, Legislature has drafted Section 11 of the Act comprehensively. Under Section 11(2) of the Act, freedom of parties to agree on a procedure for appointing arbitrators and also choose place of arbitration. In case parties fail to agree to arbitrator/arbitrators, either of them can move CJ of High Court for appointment of arbitrator.

13. A reading of Section 11(11) and 11(12)(b) of the act would lead to following. If more than one application for appointment of arbitrator to CJs of different High courts or persons designated, CJ or any person designated, to who the request is made first, shall alone be competent to decide request. In its own, Section 11(11) of the Act is not conclusive regarding territorial supremacy. Reading of Section 11(11) with Section 11(12)(b) of the Act shows that 'CJ' in subsections (4), (5), (6), (7), (8) and (10) of section 11 of the Act, means CJ of High Court within whose local limits Principal Civil Court is situated. Therefore if place of arbitration is indicated in agreement, Principal Civil Court situated at agreed place of arbitration shall be Court for the purpose of filing of set aside or non-set aside application. If this is not adopted, in a given situation, parties would be without any remedy under Section 34 of the Act to seek setting aside award. Thus, the place of arbitration assumes significance.

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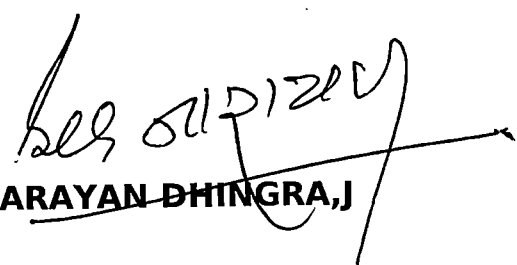
15. The law, therefore, is that when parties choose a particular State/City, as place of arbitration, it is an important factor in deciding "the Court" for the purpose of Section 9 and Section 34 of the Act. A reading of Section 31(4) of the Act would show that arbitrator shall state the date and place of arbitration in the award and it shall be deemed to be made at that place. Therefore, place of award is crucial in determining jurisdiction of the Court and High Court at the pre and post arbitration proceedings. When once the parties chose the place of arbitration, Section 11(11) of the Act has no application and only Section 11(12)(b) of the Act applies because an Award passed by an arbitrator at one place is only subject to territorial jurisdiction of Principal Civil Court of that place and not a different Court where in a given case either party to proceedings, may have place of business."

With due regard to the opinion of Andhra High Court, I consider that while entertaining an application under Section 9 of the Arbitration and Conciliation Act, the Court has to go by the definition as given under the Act in Section 2(1)(e) of Arbitration and Conciliation Act. The law gives liberty to the parties to have an

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Arbitrator of their choice and to have a place of arbitration of their choice. There is no restriction on the parties in choosing either the Arbitrator or the place of arbitration. The parties may be living in Mumbai and may like to have arbitration in Srinagar (J & K). Nobody can stop the parties from going to Srinagar for holding arbitration proceedings, even, if the subject matter of the arbitration lies in Bombay, Delhi, Calcutta or anywhere else. However, by consent, the parties cannot thrust jurisdiction on a Court which does not have jurisdiction under CPC or under Section 2(1)(e) of the Act. I therefore consider that only that Court will have jurisdiction to entertain an application under Section 9 which is the principal Court of original jurisdiction in a District which would have jurisdiction to decide the subject matter of the application if the application had been a suit. The present application involves seeking injunction and other directions from the Court in respect of immovable properties situated in Hyderabad. I consider only the Court at Hyderabad is the appropriate Court to entertain the application. This Court has therefore no territorial jurisdiction to entertain the application. The application be returned to the petitioner for filing before the appropriate Court.

MAY 01, 2009
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SHIV NARAYAN DHINGRA, J