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Through: Mr. Sunil Prakash Sharma, Advocate
for the Petitioner.

DELHI ART GALLERY PVT. LTD. & ANR. ..Respondents

Through: Mr. Sandeep Agarwal with Mr. K.A. Singh, Advocates for the Respondent No.1.

CORAM :-

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. The petition has been filed for interim measures, inter-alia of restraining the respondents from disposing of, selling, alienating the immovable property, for appointment of the nominee of the petitioner as receiver with respect thereto and for sale of the property and for direction to the respondents to furnish monetary security for the amounts alleged to be due. The petitioner claims to have advanced monies to the respondent No.1 company and for which the respondent No.2 is alleged to have stood as guarantor.

2. No ex-parte order was granted in favour of the petitioner and notice of the petition was issued. On 10th July, 2009, the counsel for the respondent No.1 company informed that the respondent No.2

has died and that the arbitration proceedings had been pending for long and in spite of several opportunities the petitioner had till then not filed the statement of claim.

3. The petitioner has not filed any application for substitution of the legal representatives of respondent No.2. The counsel for the petitioner states that the petitioner is not aware of the legal representatives and the respondent No.1 should be directed to disclose the particulars of the legal representatives.

4. The counsel for the respondent No.1 states that reply could not be filed and on being given an opportunity the same shall be filed during the course of the day. He further states that as far as respondent No.1 is concerned, there is no arbitration agreement and thus the petition against the respondent No.1 is not maintainable.

5. The counsel for the petitioner on enquiry states that an application for loan was signed by the respondent No.1; though the same contains certain terms & conditions but does not provide for arbitration; the respondent No.2 had signed a Letter of Guarantee as part of the same transaction and the said Letter of Guarantee provides for arbitration. It is argued that since the arbitration agreement contained in the Letter of Guarantee is part of the same transaction, the respondent No.1 company is also bound by the said arbitration agreement.

6. The arbitration agreement is contained in the Letter of Guarantee, in Clause 24 thereof. The Letter of Guarantee is not executed by the respondent No.1 company. The same is purported to be executed by one Shri Ashish Anand and Ms. Rama Anand

(Respondent No.2). Mr. Ashish Anand has not been impleaded as a party to the present petition, though also a signatory to the Letter of Guarantee. The counsel for the petitioner states that since the restrain order was sought against the property of Ms. Rama Anand only through Mr. Ashish Anand, though a guarantor was not impleaded as a party. The signing of Letter of Guarantee by Mr. Ashish Anand along with Ms. Rama Anand falsifies the plea of the petitioner of being not aware of the heirs of Ms. Rama Anand. In any case, the Letter of Guarantee containing the arbitration clause is signed by the said Mr. Ashish Anand & Ms. Rama Anand in their personal individual capacity and not in their capacity as Director of the respondent No.1 company and the agreement, if any, of arbitration contained in the Letter of Guarantee cannot be said to be an agreement of arbitration qua the respondent No.1 company also. Even otherwise the Letter of Guarantee is concerned, with the guarantee furnished by the aforesaid persons only and not with the disputes, if any, between the petitioner and the respondent No.1. Thus the petition against the respondent No.1 with whom the petitioner has not shown any arbitration agreement is not found to be maintainable.

7. The petitioner having not taken any steps for substitution of the legal representatives of the respondent No.2, no ground is found to grant any further opportunity to the petitioner in this regard considering the nature of the present proceedings. The arbitration proceedings are stated to be already underway and the counsel for the petitioner states that the claim petition has been filed before the arbitrator. The petitioner, if so desires shall be entitled to seek disclosure of legal representatives of Ms. Rama Anand in the said proceedings.

In the circumstances, the petition is dismissed.

No order to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 7th, 2009
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