

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

+ OMP No.425/2009 (U/s.9 of the Arbitration Act, 1996) & IA No.11265/2009 (of the Respondents No.1 & 6 U/s.8 of the Arbitration Act, 1996)

% **Date of decision: 2nd September, 2009**

SH. NARESH DASS KHANNA & ANOTHER Petitioners

Through: Mr. Mr. S.K. Puri, Sr. Advocate with
Mr. Maneesh Goyal, Advocate

Versus

SH. RAMESH DASS KHANNA & OTHERS ... Respondents

Through: Mr. Sachin Puri with Mr. Vikas Tomar, Advocates
for the Respondents No.12 to 16 and
Mr. Kirtiman Singh with Ms. Mahima Gupta,
Advocates for the Respondents No.1 & 6

AND

OMP No.442/2009 (U/s.9 of the Arbitration Act, 1996) & IA No.11266/2009 (of the Respondents No.1 & 2 U/s. 8 of the Arbitration Act, 1996)

SH. MAHESH DASS KHANNA & ANOTHER Petitioners

Through: Mr. Sachin Puri with Mr. Vikas Tomar,
Advocates

Versus

SH. RAMESH DASS KHANNA & OTHERS ... Respondents

Through: Mr. S.K. Puri, Sr. Advocate with Mr. Maneesh
Goyal, Advocate for the Respondents No.3, 12,
18, 19, 20 & 21 And Mr. Kirtiman Singh with Ms.
Mahima Gupta, Advocates for the Respondents
No.1 & 2.

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 petitioners have sought interim measures from this court of restraining the respondents Mr. Ramesh Dass Khanna and Mr. Ganesh Dass Khanna in both the petitions from creating any third party interest or executing any sale deed qua property No.4770/24, Bharat Ram Road, Daryaganj, Delhi. It is the admitted position that the parties pursuant to an arbitration agreement had submitted their disputes before an arbitrator Mr. P.N. Seth; the parties during the course of the arbitration proceedings arrived at a settlement, the terms whereof were recorded in a document titled Memorandum of Family Settlement dated 16th October, 2007; the arbitrator Mr. P.N. Seth on 20th October, 2007 in exercise of the powers under Section 30 of the Arbitration Act, 1996 made an award in terms of the said family settlement. In terms of the said family settlement the respondents Mr. Ramesh Dass Khanna and Mr. Ganesh Dass Khanna were to make certain payments to the petitioners of which two installments have been paid and the other installments continue till 31st March, 2012; it was also agreed that to secure the said payments, the said respondents shall deposit the title deeds of their property aforesaid with the petitioners.

2 The petitioners have instituted these petitions for interim measures to restrain the respondents from selling, alienating or encumbering the aforesaid property. Vide ex-parte order made in these petitions the respondents were so restrained.

3 The aforesaid respondents have not filed any reply to these petitions. Applications aforesaid under Section 8 have been filed. It is the contention of the counsel for the respondents that the powers under Section 9 can be exercised only when an arbitration

proceeding is contemplated. It is further contended that the petitioners have not stated that any arbitration proceedings are contemplated and have also not approached the named arbitrator. It is thus contended that the present petitions under Section 9 are barred by Section 8 of the Act. It is further contended that the award is executable as a decree under Section 36 of the Act and the remedy if any of the petitioners is to execute the award and not to approach this court under Section 9 of the Act. It is further contended that the Memorandum of Family Settlement in terms whereof the award aforesaid was made by the arbitrator itself in Clause 20 thereof provides for arbitration and if any disputes have arisen relating to the family settlement, the remedy of the petitioners is to approach the arbitrator and not this court under Section 9 of the Act. In fact the counsel for the said respondents had at the outset contended that these petitions be disposed of with direction to the petitioners to approach the named arbitrator in the Memorandum of Family Settlement aforesaid, under Section 17 of the Act. It is also informed that the said respondents have in fact already approached the said arbitrator in connection with certain other disputes which have arisen relating to implementation of the family settlement.

4 The senior counsel for the petitioners has on the contrary contended that the question of approaching the arbitrator at this stage does not arise since there are no disputes and all that the petitioners are seeking is to restrain the said respondents from acting in contravention of the family settlement. Doubts are also expressed as to the partiality of the named arbitrator and it is stated that the petitioners in the then circumstances were compelled at the time of family settlement to agree to the said arbitrator.

5 Section 9 provides for interim measures to be sought not only before or during the arbitral proceedings but also at any time after the making of the award but before it is enforced in accordance with Section 36. In the present case the balance payments in terms of the family settlement are not as yet due to the petitioners. Thus the petitioners at this stage cannot approach this court for executing the award for recovery of the said amounts. However since the payments agreed to be made in installments were secured by the property aforesaid, in my view the petitioners are entitled to approach the court under Section 9 to restrain the respondents from dissipating the security given for ensuring the payment. The position is the same as in the case of a party in whose favour a monetary award has been made, approaching the court before its execution for restraining the respondents from dealing with their assets so as to defeat the award/decreree. The counsel for the respondents has not been able to show as to what is the dispute for which the petitioners should have pleaded their readiness for or should approach the arbitrator inasmuch as the only grievance made in this petition is against the sale of the properties. Thus the principle laid down in ***Firm Ashok Traders Vs. Gurumukh Das Saluja*** AIR 2004 SC 1433 of the parties approaching the court under Section 9 being ready and willing to commence arbitration would not apply to the facts of this case.

6 The senior counsel for the petitioner has stated that if the said respondents are restrained from selling, encumbering or otherwise dealing with the property aforesaid till payments of the entire amounts in terms of the family settlement, the petitioners would be satisfied and would at this stage not press for the relief of deposit of

title deeds of the property with the petitioners.

7 The counsel for the said contesting respondents has not urged any other point in opposition to the petition.

8 Accordingly, the applications under Section 8 of the Act are dismissed and the petitions under Section 9 are allowed. The respondents Mr. Ramesh Dass Khanna and Mr. Ganesh Dass Khanna are, till the payment of the monies agreed to be paid to the petitioners in terms of the family settlement aforesaid, restrained from alienating, encumbering, dealing with or parting with the possession of property No.4770/24, Bharat Ram Road, Daryaganj, Delhi or any part thereof. The counsel for the said respondents confirms that as of today the said respondents are in physical possession of the entire said property as well as the title deeds with respect thereto. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

September 2nd, 2009
J