

+ **OMP.Nos. 452/2009 and 453/2009**

INDIABULLS FINANCIAL SERVICES LTD ...Petitioner

Versus

Through: None.

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

1. Both these petitions under Section 9 of the Arbitration and Conciliation Act 1996 seek interim measures as already granted to the petitioner by the arbitral tribunal, on applications of the petitioner under Section 17 of the Act. The arbitral tribunal vide order dated 31st July, 2009 in arbitration case which is the subject matter of OMP.No.453/2009 restrained the respondents from selling, alienating, parting with possession of or creating third party interest in the immovable properties situated in Kancheepuram District, Chennai. On similar relief being claimed from the arbitral tribunal in the other arbitration case, which is the subject matter of OMP.No.452/2009, the arbitral tribunal vide order dated 31st July, 2009 held that since the respondents had already been restrained as aforesaid and which restraint would cover the claims subject matter

of this arbitration case also, no separate order of injunction was required to be issued.

2. The petitioner has preferred these petitions contending that since as per the judgment of the Supreme court in **MD, Army Welfare Housing Organisation Vs Sumangal Services (P) Ltd** 2004(9) SCC 619, the orders under Section 17 of the Act are unenforceable, the same orders be passed by this court also in exercise of powers under Section 9 of the Act.

3. The petitions came up for admission before this court on 10th August, 2009. On that date the counsel for the petitioner was informed that this court had reserved order in another matter on the same legal issues.

4. Today vide orders passed in **Shri Krishan Vs Anand** OMP 597/2008 it has been held that the orders of the arbitral tribunal under Section 17 of the Act are enforceable under Section 27(5) of the Act and that party which has elected to apply for the relief under Section 17 of the Act is thereafter not entitled to seek the same relief from the court under Section 9 of the Act. It is not deemed expedient to repeat the detailed reasoning in this order.

5. Suffice it is to state that since the orders already obtained by the petitioner from the arbitral tribunal under Section 17 of the Act are enforceable, these petitions are not maintainable.

6. Before parting with the cases it is also necessary to deal with the aspect of territorial jurisdiction since relief with respect to the properties outside the territorial jurisdiction of this court is claimed. The petitioner has in the petitions stated that this court has

territorial jurisdiction, since a part of the cause of action has arisen within the territorial jurisdiction of this court and further since the parties had agreed to the exclusive jurisdiction of this court. It is clarified that neither any documents in this regard are filed alongwith the petitions nor has this court expressed any view in this regard.

With the aforesaid observations, the petitions are disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th August, 2009
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