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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 31, 2009

Date of Order: September 04, 2009

+OMP 507/2009

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Trehan Promoters & Builders Pvt. Ltd.

Through: Mr. Vikas Dhawan and Mr. S.P. Das, Advocates

04.09.2009

...Petitioner

Versus

**Welldone Technology Parks
Development Pvt. Ltd.**

Through: Nemo

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") the petitioner has made the following prayers:

"a. *pass an ad interim measures direction of interim injunction against the Respondent restraining the Respondent from, in any manner, acting contrary to and/ or inconsistent with the terms of the collaboration agreement dated 2-3-2005 and the supplementary collaboration agreement dated 10-7-2007 and in particular restraining the respondent from constructing and/or building any road providing entry and exit only to Pocket 'D' and blocking the entry and exit point to pocket 'A' from the main Gurgaon-Sohna Road in violation of the sanctioned plans.*"

2. As per the facts disclosed in the petition, the petitioner company having registered office in Delhi entered into a collaboration agreement with respondent having registered office at Lucknow. The collaboration agreement

was executed at New Delhi for developing an IT Park for commercial space on the land owned by petitioner at Village Tikri Tehsil, District Gurgaon, Haryana by the respondent at its own cost and the petitioner was to get 50% of the total sanctioned FSI and 50% was to go to respondent in terms of the sanctioned building plan. The parties allocated their shares on paper in the entire project. It is stated that as per sanctioned plan, a common entry and exit to Pocket A and D of the project was to be from Gurgoan-Sohna Road. Respondent, who was responsible for construction and development of the site, recently started working on main entry and exit by deviating from the sanctioned plan. While, as per the sanctioned plan, a common entry and exit to Pocket A and D of the project was to be provided, the respondent insisted on constructing an entry and exit road only for Pocket D falling in its share, thereby, preventing access to Pocket A from the main Gurgaon-Sohna Road. It is submitted that this action of respondent amounted to breach of collaboration agreement.

3. The cause of action for the petitioner to approach this Court arose when respondent started providing entry and exit for the different blocks of the project under collaboration agreement at Gurgaon-Sohna Road which falls within the jurisdiction of Court at Haryana. The relief which the petitioner has sought from this Court is that the respondent should be restrained from providing exit near Block D of Gurgaon-Sohna Road of the project instead of providing exit near block A. In view of these facts, the petitioner was asked to address the arguments on the issue of jurisdiction of this Court. It is submitted by petitioner that since the prayer made by the petitioner is for compliance of the terms of collaboration agreement and this compliance is to be obtained from personal obedience, this Court will have jurisdiction in terms

of proviso to Section 16 of Civil Procedure Code. The petitioner relied on *Mrs. Bhawna Seth v DLF Universal Limited & Anr. CS (OS) 2110 of 1998* decided on 19th February 2007 and *Adcon Electronics Pvt. Ltd. v Daulat & Anr. JT 2001(7) SC 580*. In *Adcon Electronics Pvt. Ltd.* (supra), the Supreme Court had considered Clause 12 of Letter Patent of High Court of Bombay and Section 22 of the Specific Relief Act and observed that a suit for land is a suit in which relief claimed relates to title or delivery of possession of land or immovable property and a suit for specific performance of contract to execute and register a lease with alternative claim for damages is not a suit for land within the meaning of Clause 12 of the Letters Patent Act. In my considered view, this judgment is not applicable to the case of petitioner herein that approached this Court under Section 9 of the Arbitration & Conciliation Act since this judgment has not addressed and dealt with the issue of jurisdiction under Section 9. It is settled law that every judgment of the High Court or the Supreme Court decides lis before it and unless and until a general law is laid down, the judgment is not to be treated as a statute.

4. In *Bhavna Seth's case* (supra), this Court after considering the various judgments passed by this Court and *Adcon Electronics Pvt. Ltd.* (supra) and *Harshad Chiman Lal Modi v. DLF Universal Ltd. & Anr. (2005) 7 SCC 791*, observed that a distinction has been carved out in respect of a suit where no possession has been claimed of the land (subject matter of suit) and a suit in which possession of the land has been claimed. The suit in *Bhavna Seth's case* (supra) was also for specific performance of the contract i.e. for enforcement of the contract for sale and for execution of sale deed. The counsel for plaintiff in that case told the Court that plaintiff would not press for relief of possession and plaintiff reserved its right to file separate suit for

possessions at a later stage. Since the plaintiff did not claim relief for possession, despite the fact that the property was not situated within the jurisdiction of this Court, this Court considered on the basis of Adcom Electronics Pvt. Ltd. (supra) that this Court shall have territorial jurisdiction to entertain and try the suit. The case of *Bhavna Seth (supra)* was also under Specific Relief Act.

5. Section 9 of the Arbitration & Conciliation Act, 1996 gives powers to the Court to pass an interim order to the following effects:

*“(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:-
(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
(b) securing the amount in dispute in the arbitration;
(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.”*

6. Section 9 is applicable only where a party has invoked the arbitration clause or has intention to invoke the arbitration clause. Section 9 is not in the nature of provisions of Specific Relief Act where a party can come to the

Court and pray for a relief of performance of the contract and ask the Court to compel the other party to abide by the terms and conditions of the contract and seek an injunction from the Court that the party should be restrained from violating the terms and conditions of the contract. In fact, Section 9 of the Act envisages existence of an arbitration clause whereunder the disputes resolution mechanism is provided and the parties had chosen the arbitration as a dispute resolution mechanism instead of choosing the Court to resolve their disputes. Resort to the Court under Section 9 of the Act is for limited purpose of preserving the property which is the subject matter of dispute so that by the time the arbitrator decides the dispute, the property itself is either sold away or disposed of by the opposite side, or being of perishable nature is likely to perish or where there is need to appoint a receiver, the Court passes an order for appointing a receiver. The extent and scope of relief under Section 9 of the Act cannot extend so as the Court directs a party to specifically perform the contract so that the party approaching the Court has not to go to the arbitrator for breach of contract. Section 9 does not envisage a situation where the order of the Court under Section 9 itself settles the disputes between the parties. Neither by the instrumentalities of Section 9, the Court can put the party back into pre-dispute situation and ask the party to comply with the contract. Even under Order 39 Rules 1 & 2 CPC, which is referred to as akin to Section 9 of the Act, an interim relief cannot be granted which is same as the relief sought in the suit, and which amounts to disposal of the suit itself. [*P. Subbarao and Ors. v Andhra Pradesh Association FAO (OS) 25 2007 Delhi DB*]. If the Court could direct specific performance of the contract under Section 9 of the Arbitration & Conciliation Act, and could place the parties in the position prior to rising of dispute, no dispute would ever go to the arbitrator and by an interim relief itself, the Court would be finally

disposing of all the disputes between the contracting parties by just directing specific performance of the contract, irrespective of the breach on the part of one or the other.

7. I also consider since the property is situated outside the territorial jurisdiction of Delhi this Court would have no jurisdiction. The parties entered into the collaboration agreement for developing the immovable property. The disputes regarding development of the property, construction, entry, exit are the disputes in respect of immovable property and the rights of the parties therein. Clause 16(d) of CPC provides that for determination of any right or interest for immovable property, the suit has to be instituted in the Court within the local limits of whose jurisdiction the immovable property is situated. Whether the petitioner should have a gate on the main Gurgaon-Sohna Road or on the side road as sought to be constructed by respondent is a dispute of rights of petitioner in respect of the property only. It is not a dispute qua a personal right against the respondent. The proviso cannot be explained in a manner that for every relief under Section 16 CPC personal obedience is pleaded. For example, in case of Clause 16(a) CPC, if respondent is in possession of the immovable property, he can be directed to handover possession of immovable property and the immovable property can be recovered by the respondent being compelled by personal obedience of such a direction of the Court. Similarly, respondent can be compelled by personal obedience to partition the immovable property by handing him over a site plan and drawings of lines on site plan where he has to construct the walls. Even the foreclosure of mortgage, sale or redemption can be got done through the personal obedience of the parties. The immovable property is incapable of performing any act in itself. It is only the owner/ lessor/ lessee

/mortgagee/ licensee who has to do the different acts in respect of the property. If the property has to be transferred from A to B, A has to personally execute a sale deed in favour of B. It is the person concerned with the property who has to do certain acts in respect of the property for all purposes concerning the property. I, therefore, consider that personal obedience cannot be stretched to such an extent that Section 16 of CPC itself becomes redundant. I find no act in respect of the property which cannot be got done through personal obedience by directing the owner/ person concerned with the property.

8. In my view, the proviso would not be applicable in order to invoke the jurisdiction under Section 2 (i) (e) read with Section 9 of the Arbitration & Conciliation Act, 1996 so as to claim relief qua the property situated in Gurgaon, Haryana from the Court in Delhi.

9. In view of my foregoing discussion, I find that this Court has no territorial jurisdiction to entertain the present petition. The petition is liable to be dismissed and is hereby dismissed in limine. No orders as to costs.

September 04, 2009
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SHIV NARAYAN DHINGRA J.