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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 29, 2009

Date of Order: August 12, 2009

+ OMP No.539/2008

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12.08.2009

M/S. PROVIDENCE BUILDTECH PVT LTD. ... Plaintiff

Through : Mr. Rajive Sawhney, Sr. Adv. with
Mr. Sanjay Bhatt & Mr. Abishek Kumar,
Advs.

Versus

Mr. PRATAP DUBE

.... Defendants

Through: Mr. Dhruv Mehta with Mr. Vijay Nair &
Mr. Rajat Joneja, Advs.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this application under Section 9 of the Arbitration and Conciliation Act, 1996, petitioner has made a prayer that the respondent be restrained from alienating, encumbering or disposing of land acquired by him from MAS society whether in his own name or in the name of any associate or nominee as well as respondent be restrained from alienating or encumbering property no. 8, Golf Links, New Delhi and property no.W-53, Greater Kailash, Part II, New Delhi.

2. It is submitted by the petitioner that M/s. Ritmay Builders Pvt. Ltd. (RBPL) had entered into an MOU with the respondent and his company Multivac International Pvt. Ltd (MIPL) on 19.12.2006. Under the MOU, the petitioner and the respondent were jointly to undertake the development of land to the extent of 450 acres in Noida and MIPL was to be converted into a Special Purpose Vehicles for this object. It was subsequently agreed that the land in Noida would be acquired not in the name of the MIPL but in the name of a new company incorporated, i.e., petitioner and RBPL would advance the amount for requisition of the land. RBPL was to give an advance of Rs.25 crore to the respondent for securing the transfer of land in favour of the petitioner in Noida. At the time of executing the MoU, RBPL gave an advance of Rs.5 crore to respondent and respondent executed promissory notes of Rs.5 crore in favour of RBPL and also issued a cheque of Rs. 5 crore on account of MIPL. The respondent further agreed to protect interest of RBPL and agreed to fulfill its obligation under the MOU by providing security to RBPL of 8, Golf Links, New Delhi, a property owned by the respondent. The respondent had assured of creating a mortgage of this property in favour of the petitioner. Apart from advancing a sum of Rs.5 crore, further amount of Rs.6.5 crore was advanced by RBPL to the petitioner. After this advance, respondent executed a collaboration agreement with the RBPL in relation to 8, Golf Links, New Delhi. It was informed by the respondent that the

property 8, Golf Links, New Delhi was already mortgaged with HDFC bank, Munirka Branch and therefore cannot be mortgaged to RBPL. It is submitted that in May, 2007 taking undue advantage of trust, faith and confidence of the petitioner's director, respondent misrepresented that he was going to London for a serious heart by-pass surgery and his survival was doubtful. For his mental comfort and that his family be not in trouble because of collaboration agreement, the collaboration agreement be cancelled. Under this misrepresentation, collaboration agreement was cancelled by RBPL and the respondent also obtained Navin Munjal's (director of RBPL) signatures on some letters which were got prepared to confirm that he had no liability to RBPL. However, Mr. Munjal learnt about misrepresentation and about falsehood and fraud played by the respondent. He found out that the respondent had not undergone any surgery and in fact had diverted funds for his own personal use and enjoyment. By that time the respondent had been advanced a sum of Rs.5 crore directly by RBPL and Rs. 1 crore through petitioner which amount was withdrawn by the respondent for payment to society from whom Noida land was to be purchased and another amount of Rs. 23.82 crore was advanced by RBPL to the petitioner which was paid by it directly to the respondent for specific purpose of paying the sale price of the land to the society. The respondent had thus in total received from RBPL Rs.29.82 crore for the purpose of acquiring and paying towards sale price of Noida

land. The respondent failed to secure the purchase of agreed land and also failed to fulfill his obligations of obtaining clearance from statutory authorities for change in land use. He also did not render accounts of the money advanced to him. In view of this situation, with the help of a common friend Mr. Anil Arora, meetings were held between the parties and in early October, 2007, the respondent agreed that he would resign from the Board of Directors of petitioner and would transfer his shares/rights in the petitioner's company to Naveen Munjal. However, he kept on postponing this, assuring that he was closed to requisitioning the Noida land. In November, 2007 he was told in a meeting that he had cheated the petitioner and unless he refunded the amount, criminal action should be taken against him. Ultimately, an exit agreement dated 29th November, 2007 was signed between the petitioner and the respondent incorporating the agreement arrived at between the parties in view of the latest situation. However, the respondent failed to adhere to the terms of the agreement. The cheques issued to the petitioner by the respondent for return of the unpaid amount got dishonoured and proceedings under Section 138 of Negotiable Instruments Act were initiated against the respondent. The respondent also filed a Company Petition being CP no.6/08 alleging oppression and mismanagement in the petitioner's company. It is submitted that there is an arbitration clause in exit agreement dated 29th November, 2007 and under this agreement, the

respondent had agreed for completion of acquisition of Noida land from the society in the name of the petitioner and for refund of an amount of Rs.3.87 crore only within an agreed time period and in case the respondent failed to secure the Noida land for the petitioner he was to refund amount of Rs.14.87 crore in addition to Rs.15 crore for which he had given post-dated cheques. The petitioner submitted that the respondent had failed to fulfill any of the obligations under exit agreement dated 29th November, 2007 and he apprehended that the respondent would alienate or sell the property in order to defeat the claim of the petitioner. Hence, the application.

3. The respondent in its reply denied the allegations made by the petitioner. It is stated by the respondent that the exit agreement dated 29th November, 2007 was obtained from the respondent by playing fraud. The exit agreement was lying with the CA of the respondent duly signed by the respondent and the CA was to hand over the agreement to the petitioner only after instructions from the respondent but the petitioner's representative approached the CA of the respondent and misrepresented that a settlement has been arrived at and some changes were to be made in the agreement and therefore it be handed over to the petitioner. He submitted that the contract between the parties had come to an end and an MOU was signed in this respect in May, 2008 and a 'No Due Certificate' was issued by the RBPL. The exit agreement was an

invalid agreement and the present application was a counterblast of the petitioner since the respondent had filed a suit in Delhi High Court for declaration.

4. This Court while deciding AA Nos. 9/09 and 10/09 has held that prima facie agreement dated 28th November, 2007 was duly signed agreement by the parties. It was signed by the respondent as a party and by his Chartered Accountant as his witness. This Court referred the matter between the parties to the Arbitrator for adjudicating the disputes as raised by the respondent in the suit as well as as raised by the petitioner in application under Section 11. There is a prima facie case in favour of petitioner. Receiving of huge amount by respondent is undisputed.

5. The petitioner has sought a restraint order against the respondent in respect of a land acquired from MAS society but no description of the land has been given. Unless there is a description of the land, this Court cannot issue a blanket restraint order in respect of land whose no particulars are given. It is pleaded by the petitioner himself that 8, Golf Links, New Delhi was mortgaged to HDFC Bank. The interests of HDFC bank are therefore superior to that of the petitioner. The Court cannot issue a restraint order in respect of 8, Golf Links, New Delhi so long as the claim of the HDFC bank is not satisfied since the property stands mortgaged with HDFCF bank. The third property mentioned by the petitioner is W-

53, Greater Kailash, Part II which seems to be the residential address of the respondent. Since the amount involved in this case is huge and documents also reveal that the respondent had given security of 8, Golf Links, New Delhi which was already lying mortgaged with HDFC bank. I consider that the interest of the petitioner can be safeguarded if the residual interests of the respondent in 8, Golf Links, New Delhi after meeting the claims of the HDFC bank are not sold and property no. W-53, Greater Kailash, Part II is made subject matter of the restraint order.

6. I therefore allow the application to the extent that the respondent shall not alienate or create any third party interest in property no. 8, Golf Links, New Delhi after meeting out the claims of the HDFC bank on this property. The respondent is also restrained from alienating or encumbering or creating third party interest in respect of the property no. W-53, Greater Kailash, Part II. However, in case this property is already mortgaged with any banks or financial institutions, the same shall have precedence over the petitioner's claim.

7. With these directions, this petition is disposed of.

August 12, 2009
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SHIV NARAYAN DHINGRA J.