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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.395 OF 2015

Vanita Om Agrawal

...Petitioner

V/s.

Charisma Buildes Ltd.

...Respondent

Mr.G.S. Hegde i/b Mr.P.M. Bhansali for the Petitioner.

Mr.S.A.Oak i/b Mahesh Menon & Co. for the Respondent.

**CORAM : R.D. DHANUKA, J.**

**DATE : 25TH JUNE, 2015.**

**P.C. :-**

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks an injunction against the respondent from creating any third party rights in respect of the properties described in prayer clause (a) and (b) to the petition and pressed for an order of *status-quo* in respect of such properties till the disposal of the arbitration proceedings.

2. It is not in dispute that the petitioner is entitled to 1/12<sup>th</sup> share in both the suit properties and had entered into a memorandum of understanding with the respondent. The respondent under the said memorandum of understanding has only paid 10% of the consideration amount so far to the petitioner. It is the case of the respondent that since the petitioner did not make out the title of the

petitioner clear in respect of both these properties, the balance consideration was not paid by the respondent. The petitioner has already terminated the said memorandum of understanding entered into with the respondent. My attention is invited to the averments made in the petition and also to the affidavit in reply filed by the respondent and more particularly paragraph 3(vii) and (viii). It is stated in the affidavit in reply that M/s.Charisma Builders Ltd. made an application to the society viz. M/s.Sindhi Immigrants Co-operative Housing Society Limited after which the said society has transferred the shares in respect of the properties in favour of the said M/s.Charisma builders Ltd. It is stated that the said builders are now the lessees of the said property and sole owner of the building viz. "Kishan Niwas".

3. In my *prima-facie* view there is no merit in the submission of learned counsel for the respondent that the petitioner had no title in respect of the said property. If that was so, the respondent would not have applied for transfer of the entire property, including undivided share of the petitioner to the society for transfer of such properties in their name. It is not in dispute that the respondent did not pay the balance consideration.

4. Learned counsel for the respondent states that the stage of making payment of balance consideration to the petitioner did not

arise. It is submitted that in any event, the respondent has already got the property registered in the record of the society. No interim order thus can be granted by this Court. It is submitted that since the petitioner has not impugned the transfer of the properties in the name of the respondent, no interim measures can be granted in this proceedings under section 9 of the Arbitration & Conciliation Act, 1996.

5. During the course of hearing, this Court enquired whether the respondent is ready and willing to deposit the entire balance consideration without prejudice to the rights and contentions of both the parties, payable under the said memorandum of understanding in this Court to show the *bona-fides* of the respondent, the respondent is not agreeable to deposit any amount.

6. Since the respondent had not made the balance consideration to the petitioner under the said memorandum of understanding and the said memorandum of understanding had already been terminated, in my view the respondent could not have transferred the said property, including the undivided share of the petitioner in its own name. The undivided share of the petitioner is thus required to be protected.

7. Insofar as the submission of learned counsel for the respondent that the petitioner has not challenged the transfer of the

property in the name of the respondent is concerned, the said transfer can be challenged by filing the statement of claim before the learned arbitrator. It is also not in dispute that though the petitioner has already terminated the memorandum of understanding, the respondent has not challenged such termination in any Court of law. In my view the petitioner has thus made out a *prima-facie* case for grant of interim reliefs, as prayed for in prayer clauses (a) and (b). It is ordered accordingly.

8. The arbitration petition is disposed of in the aforesaid terms. No order as to costs.

***(R.D. DHANUKA, J.)***