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

Pronounced on: October 20 , 2015

\+   LPA No.313/2015, CMs 9472/2015, 9476/2015, 11643-45/2015

M/S VLS FINANCE LIMITED ..... Appellant

Through: Mr. Aman Lekhi, Sr. Adv. with Mr.Jayant K. Mehta, Mr. Nikhil Rohtagi, Mr.Samit Khosla, Mr.Saurabh Karan Singh, Mr. Ashok Sharma, Advs.

Versus

SOUTHEND INFRASTRUCTURE PVT.LTD. & ANR. .... Respondents

Through: Mr.Anil Airi, Mr. R.K. Chandna, Advs. for Respondent No.1

Mr.Dushyant Dave and Mr.Chetan Sharma, Sr. Advocates with Mr. Vijay K. Sondhi, Mr. V. D'costa, Mr.Ashish Kr. Singh, Mr.HarshadPathak, Advs. for Respondent No.2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

:   Ms.G.ROHINI, CHIEF JUSTICE

1. By the order under appeal dated 04.12.2014 the learned Single Judge vacated the interim order of status quo granted on 09.01.2014 in Contempt Case No.970 of 2013.

2. Aggrieved by the same, the petitioner in the Contempt Case preferred the present appeal under Clause 10 of the Letters Patent.

3. The learned counsel for the respondents, at the outset, raised an objection as to the maintainability of the appeal under Clause 10 of the Letters Patent contending that an appeal against an interim order passed in proceedings under the Contempt of Courts Act, 1971. To substantiate the said objection, the learned counsel placed reliance upon ***Parents Association of Students v. M.A. Khan***, **(2009) 2 SCC 64**, ***VM Manohar Prasad v. N. Ratnam Raju***, **(2004) 13 SCC 610**, ***R.N. Dey v. Bhagyabati Pramanik***, **(2000) 4 SCC 400** and ***Raj Singh Gehlot v. Pardiam Exports Ltd.***, **2010 (120) DRJ 80**.

4. The preliminary objection is sought to be opposed by the learned counsel for the appellant on the basis of ***Midnapore Peoples' Cooperative Bank Ltd. v. Chunilal Nanda &Ors.***, **(2006) 5 SCC 399**. It is also submitted by the learned counsel for the appellant that in the peculiar facts and circumstances of the present case, a restrictive interpretation of Clause 10 of Letters Patent is unwarranted.

5. Before proceeding further, the background of the facts leading to filing of the Contempt Case may be noted.

6. A tripartite agreement dated 12.07.2007 called 'agreement for contribution towards equity' followed by a Supplemental Agreement dated 24.09.2007 was entered into between VLS Finance Ltd. (for short VLS), BMS IT Institute Private Limited (for short BMS) and one D.K. Gupta. It appears from the terms of the said agreement that BMS was allotted 34275 sq.mts. of land bearing Plot No.C-20, 1A/10, Block-C in Sector 62, NOIDA (U.P.) by the New Okhla Industrial Development Authority (NOIDA) for development of IT and IT enabled services. Shri D.K. Gupta along with other group of persons named in Schedule-A to

the Agreement and VLS jointly came forward to participate by investing for the development of the project for which the land was allotted to BMS by NOIDA. The terms of participation in the project as agreed upon between the parties to the Agreement have been specified in Article 1 of the Agreement.

7. On 19.04.2012, VLS filed OMP No.383 of 2012 in this Court under Section 9 of the Arbitration and Conciliation Act, 1996 against BMS and 11 other respondents pleading inter alia -

(i) that BMS apart from NPMG Developers Ltd. and Southend Infrastructure Pvt. Ltd. (arrayed as respondents 11 and 12 to OMP) are owned and controlled directly by the respondents 2 to 10 therein;

(ii) that the respondents 2 to 10 have used the instrumentality of BMS and respondents No.11 and 12 to play a fraud on VLS and to divert the funds invested by it;

(iii) that VLS invested an amount of Rs.24.92 crores in BMS (respondent No.1 in OMP) and that it has Rs.56,00,000/- shares constituting approximately 28% of the share capital of BMS;

(iv) that since the respondents therein committed breach of terms of the Agreement, it invoked the arbitration clause under the Agreement by notice dated 28.03.2012;

(v) that the respondents had acted in breach of the terms and conditions of the lease granted to BMS by NOIDA thereby exposing BMS to imminent risk of cancellation and in such an event BMS would be left without any asset;

(vi) that the respondent No. 12, i.e., Southend Infrastructure Pvt. Ltd. (for short Southend) owns a plot admeasuring 5 acres in Okhla Industrial Area (hereinafter referred to as Okhla property) and the said asset is under the threat of re-entry by the NOIDA due to the defaults and breaches committed by BMS of the terms of the registered lease deed dated 10.04.2006;

(vii) that BMS and Southend had lent moneys to one another and ultimately to the respondent Nos. 2 to 10 therein; and

(viii) that the instrumentalities of BMS and Southend had been abused by the respondents 2 to 10 to rotate the moneys invested by VLS in BMS.

8. Thus, VLS sought a direction to the Respondent Nos. 2 to 12 to provide an unencumbered and interest bearing liquid security to VLS for an amount of Rs.74,98,81,380/- and interest thereon from 01.04.2012 onwards at the rate of 2% per month compounded at quarterly rests and to keep it alive and good during the pendency of the arbitration proceedings and for a period of 120 days thereafter.

9. This Court on 27.04.2012, while issuing notice to the respondents, passed the following order in OMP No.383 of 2012:

> "Till the next date of hearing, Respondents 2 to 12 are restrained from alienating, selling, transferring, mortgaging, encumbering, disposing of or in any manner dealing with their immovable properties. The Respondents will, within four weeks of the service of notice, file affidavits indicating

the list of their movable and immovable properties including bank balances."

10. After service of notice, OMP No.383 of 2012 was heard on 04.09.2012 and taking note of the fact that the learned Arbitrator has already entered upon reference and the arbitral proceedings are in progress, this Court disposed of OMP No.383 of 2012 by the following order:

> "2. In the circumstances, it is directed that the interim order passed by this Court on 27th April, 2012 is continued till such time the learned Arbitrator passes an order on an application filed by either party under Section 17 of the Arbitration and Conciliation Act, 1996 ('Act') for appropriate interim relief including the variation/ modification of the interim order dated 27th April, 2012 passed by this Court. Such of the Respondents herein who are parties to the arbitral proceedings will in terms of the order passed by this Court on 27th April, 2012 file their respective affidavits before the learned Arbitrator within two weeks from today.
>
> 3. The petition is disposed of in the above terms. Order be given dasti to the learned counsel for the parties."

11. On 09.12.2013, VLS filed Contempt Case No.970 of 2013 against the respondents herein i.e., Southend Infrastructure Pvt. Ltd. and Wonder Space Properties Pvt. Ltd. alleging that Southend Infrastructure Pvt. Ltd., which was a party to OMP No.382 of 2012 (arrayed as respondent No.12), had executed a Conveyance Deed dated 10.06.2013 in favour of Wonder Space Properties Pvt. Ltd. (for short Wonder Space) in respect of development rights in its property i.e. Okhla property and that the said conveyance is manifestly in the teeth of the orders dated 27.04.2012 and 04.09.2012 passed in OMP No.383 of 2012. Accordingly, VLS prayed

for initiating proceedings for contempt against Southend and Wonder Space and also to hold that the Conveyance Deed dated 10.06.2013 has no legal effect or consequence and direct Southend to deposit in this Court a sum of Rs.178,00,00,000/- received by it under the Conveyance Deed dated 10.06.2013. Along with Contempt Case No.970 of 2013, VLS filed I.A. No.20181/2013 seeking *inter alia* stay of operation of the conveyance deed dated 10.06.2013 executed by Southend in favour of Wonder Space and to restrain both of them from taking any steps in furtherance of the said conveyance deed dated 10.06.2013.

12. On 09.01.2014, the following interim order was passed in Contempt Case No.970 of 2013:

> "................ Issue notice to the respondents returnable on 5th May, 2013.In the meantime, the second respondent, Wonder Space Properties Pvt. Ltd. in favour of whom the development rights, as described in the Conveyance Deed dated 10thJune, 2013, executed between the respondents in respect of the property in question, i.e., B-319, Okhla Industrial Area, Phase I, New Delhi, have been granted, shall maintain status quo."
>
> (emphasis supplied)

13. On 28.02.2014, Wonder Space (respondent No.2 in Contempt Case) filed IA No. 4181/2014 with a prayer to modify/vary the order dated 09.01.2014 by deleting any reference to Wonder Space and to clarify that Wonder Space is not in any manner restrained from pursuing the development of the project on Okhla property. The primary contention of Wonder Space was that Okhla property in respect of which Conveyance Deed dated 10.06.2013was executed in its favour is not the subject matter of the Agreement dated 12.07.2007. It was also contended that there is no privity of contract between VLS and Wonder Space and

therefore the restraint order could not have been passed against it. The further contention was that Wonder Space being a *bona fide* purchaser of the Okhla property under the Conveyance Deed dated 10.06.2013, the interim order of status quo shall not affect its rights.

14. The said application was disposed of by the learned Single Judge by the order under appeal dated 04.12.2014 holding that the applicant – Wonder Space could not have been directed to maintain status quo with regard to Okhla property which is not at all in issue either in OMP or in the statement of claim filed before the Arbitrator. It was further held that the stay orders passed in OMP No. 383/2012 dated 27.04.2012 and 04.09.2012 ceased to exist qua Southend since it was not a party before the arbitrator and it was also not a signatory to the arbitration agreement. Observing that the Contempt Court cannot enlarge the scope of an original order and pass a fresh ad interim order on account of alleged wilful breach of earlier order which may give rise to a fresh cause of action, the learned Single Judge concluded that the order of status quo dated 09.01.2014 is liable to be vacated. Accordingly, the order of status quo was vacated.

15. Challenging the said order dated 04.12.2014, VLS had initially filed FAO(OS) No.82/2015 under Section 10 of the Delhi High Court Act, 1966. A Division Bench of this Court by judgment dated 30.04.2015 dismissed the appeal holding that FAO(OS) is not maintainable under Section 10 of the Delhi High Court Act, 1966. Thereafter, the present appeal came to be filed under clause 10 of the Letters Patent.

16. Shri Dushyant Dave and Shri Chetan Sharma, the learned senior counsels appearing for the respondents apart from raising an objection as

to the maintainability of the appeal under Clause 10 of the Letters Patent, further contended that the contempt case itself is misconceived and is a gross abuse of process of this court. While submitting that a contempt petition is a matter between the alleged contemnor and a court, it is contended by the learned Senior Counsels that the applicant has no right to insist on interim directions in a contempt petition and, therefore, the order under appeal was rightly passed vacating the interim order dated 09.01.2014.

17. Rebutting the said contention and justifying the interim order of status quo dated 09.01.2014, it is contended by Shri Aman Lekhi, the learned senior counsel appearing for the appellant that there is no reason to vacate the said order, qua Southend since the vacate application was filed only by Wonder Space. It is sought to be contended by Sh. Aman Lekhi that the learned Single Judge has erred in proceeding on the premise that the Okhla property is not the subject matter of the arbitration proceedings. Pointing out that apart from 34275 sq. mts. of land in Plot No.C-20 of NOIDA which is the subject matter of tripartite agreement the injunction order dated 27.04.2012 in OMP No.383/2012 has also covered the immovable properties of the respondents No.2 to 12 therein, it is contended by the learned senior counsel that Southend being respondent No.12 is bound by the said order and therefore execution of Conveyance Deed dated 10.06.2013 by Southend in favour of Wonder Space in respect of its Okhla property is in the teeth of the order of injunction dated 27.04.2012 as confirmed on 04.09.2012. It is also contended that the conclusion of the learned Single Judge that the orders dated 27.04.2012 and 04.09.2012 ceased to exist qua Southend is erroneous since the said orders were never challenged by the respondents and thus

attained finality. The further contention is that the Conveyance Deed dated 10.06.2013 executed by Southend appointing Wonder Space as its agent to develop the Okhla property and also allowing Wonder Space to mortgage the said property and create third party rights was manifestly contemptuous. It is further contended that the order under appeal not only suffers from factual errors but it is also legally impermissible and unsustainable since it has virtually set aside / nullified the orders dated 27.04.2012 and 04.09.2012 in OMP No. 383/2012 passed by a coordinate Bench and which attained finality.

18. The contentions of the respondents on merits of the appeal are that Wonder Space not being a party to OMP No.383/2012 and was not injuncted by orders dated 27.04.2012 and 04.09.2012, Contempt Case No.970/2013 is not maintainable at all against Wonder Space and no interim order could have been passed against Wonder Space with regard to the property which is not the subject matter of the tripartite agreement. In support of the said submission, the learned counsel for the respondents relied upon the decision in ***Parent's Association of Students*** (supra) wherein it is held:

> "19. The question as to whether a person, although not a party in the original writ proceedings, could be proceeded against, is a debatable one. Such a question, therefore, was required to be determined at the threshold. If prima facie two views are possible and unless it is firmly held that Respondent 1 not only was bound by the directions issued by the High Court but he had also defied it wilfully and deliberately, he cannot be punished for commission of contempt. If, prima facie, the appellant (*sic* Respondent 1) cannot be punished for commission of contempt of the High Court, an interim order also should not have been passed.............."

19. While submitting that both Southend and Wonder Space are not parties to the arbitration proceedings and are in no way concerned with the disputes between VLS and BMS and further the Okhla property is not the subject matter of injunction orders passed in OMP No.383/2012, it is further contended that the restraint order dated 27.04.2012 ceased to operate on 04.09.2012 itself so far as Southend is concerned.

20. It is also pointed out by the learned counsel for the respondents that, (i) though VLS filed an application under Section 17 before the Arbitral Tribunal, it did not seek extension of restraint orders passed in OMP No. 383/2012 but sought a direction to the respondents to disclose on affidavits with complete and precise particulars of their shareholding in all companies and etc. pleading that the respondents are bound to furnish those details in terms of the orders dated 27.04.2012 and 04.09.2012 in OMP No.383/2012; (ii) the dispute raised by VLS against BMS with regard to its rights under the agreement dated 12.07.2007 culminated in the Arbitral Award dated 02.03.2015; (iii) thereafter VLS filed OMP No.114/2015 under Section 9 of the Arbitration Act seeking interim protection till the award is enforced and the same was also disposed of by this court by order dated 05.05.2015 with certain directions and that (iv) against the order dated 05.05.2015 in OMP No.114/2015 VLS filed FAO(OS) No.295/2015 in which a Division Bench of this court on 29.05.2015 passed an interim order that Southend (respondent No.12 therein) shall keep full accounts with respect to utilization of the monies received from Wonder Space.

21. We have given our thoughtful consideration to the rival submissions.

Preliminary Objection with regard to the Maintainability of the Present Appeal

22. Section 19 of the Contempt of Courts Act, 1971 which provides for appeals reads as under:

> "19(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt –
>
> (a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;
>
> (b) where the order or decision is that of a Bench, to the Supreme Court.
>
> xxx xxx xxx xxx"

23. Section 19 of the Contempt of Courts Act provides for an appeal only against an order of punishment for contempt. Therefore no appeal lies under Section 19 of the Contempt of Courts Act, 1971 against the order of the learned Single Judge dated 04.12.2014which is evidently not an order passed in exercise of the jurisdiction to punish for contempt.

24. Therefore, the question is whether the right of appeal under Letters Patent is available to the appellant?

25. In ***Midnapore Peoples' Cooperative Bank Ltd.*** (supra), the following two questions were formulated for consideration:

> (i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the

> Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?
>
> (ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under Clause 15 of the Letters Patent?"

26. So far as question No.(i) is concerned, it was answered in para 11 as under:

> "11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:
>
> I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.
>
> II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.
>
> III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.
>
> IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or

> decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.
>
> V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).
>
> The first point is answered accordingly."

27. With regard to question No. (ii) relating to maintainability of an intra-court appeal under Letters Patent against an interlocutory order, it was held in paras 15 and 16 as under:

> "15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:
>
> (i) Orders which finally decide a question or issue in controversy in the main case.
> (ii) Orders which finally decide an issue which materially and direct affects the final decision in the main case.
> (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
> (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
> (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

> 16. The term “judgment” occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matter in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) and (iii) above, are, therefore, “judgments” for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments” for the purpose of filing appeals provided under the Letters Patent.”

28. It is clear from the ratio laid down in ***Midnapore Peoples' Cooperative Bank Ltd.*** (supra) that if the High Court in a contempt proceedings decides an issue or makes any direction relating to the merits of the dispute between the parties, the aggrieved person is not without remedy and that such an order is open to challenge in an intra-court appeal.

29. In ***Parents' Association of Students*** (supra) which is a later decision rendered by a coordinate Bench, it was reiterated that a person aggrieved by an order must have a remedy and that technicalities of law should not be allowed to come in his way to move the higher courts.

30. We have already noticed that the appellant had initially invoked the remedy of intra-court appeal under Section 10 of Delhi High Court Act, 1966 which was dismissed as not maintainable. Hence, the present intra-court appeal invoking Clause 10 of the Letters Patent.

31. In ***Midnapore People's Cooperative Bank Ltd.*** (supra), the Supreme Court was dealing with an interim order passed by the High Court of Calcutta in a Contempt Application. It was held that though the said order was not a 'final judgment', it was an 'interlocutory judgment' which finally decided several rights and obligations of the employee *vis-a-vis* the employer and therefore appealable under Clause 15 of the Letters Patent. It was explained that the term 'judgment' occurring in Clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matter in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties.

32. Regarding the decisions cited by the learned Counsel for the respondents in support of the objection as to the maintainability of the appeal under Clause 10 of the Letters Patent, it may be added that the Supreme Court in ***Parents' Association of Students*** (supra) had taken note of the fact that in view of the conflicting opinions expressed by the co-ordinate benches, the question was referred to a three Judge Bench in ***Dharam Singh vs. Gulzari Lal*** **(Civil Appeal No. 5869/2005**).

33. It appears that subsequently, the Civil Appeal No. 5869/2005 was dismissed as withdrawn and thus the question referred to the three Judge Bench remained undecided. No other decision of a larger bench taking a contra view is brought to our notice.

34. Hence, the ratio laid down in ***Midnapore People's Cooperative Bank Ltd.*** (supra) stands good and as we could see the same is squarely applicable to the case on hand.

35. Therefore the two questions that require consideration are (1)whether by the order dated 04.12.2014 the Learned Single Judge has decided an issue relating to the merits of the dispute between the parties; and (2) whether the said order can be considered as "judgment" so as to maintain an appeal under Clause 10 of the Letters Patent.

36. As noticed above Contempt Case No.970/2013has been filed by the appellant herein alleging that the execution of the Conveyance Deed dated 10.06.2013 by Southend in favour of Wonder Space in respect of Okhla property is in violation of the orders dated 27.04.2012 and 04.09.2012 in OMP No.383/2012. Thus, the only question that requires consideration in the Contempt case is whether the allegation of alleged violation is made out and whether the respondents i.e. Southend and Wonder Space are liable to be hauled up for contempt.

37. However, pending the Contempt Case two orders came to be passed on 09.01.2014 and 04.12.2014 by virtue of which initially the respondents were injuncted from dealing with Okhla property and subsequently the same was vacated holding *inter alia* that Okhla property is not the subject matter of the proceedings in OMP 383/2012 as well the arbitral proceedings and that the respondent No.2 (Wonder Space) who is a bona fide purchaser could not have been directed to maintain status quo with regard to Okhla property.

38. Both the above-said orders dated 09.01.2014 and 04.12.2014 are not orders passed in exercise of the jurisdiction to punish for contempt since apparently the learned Single Judges had gone into the merits of the disputes between the parties and rendered decision thereon. Therefore according to us, though the appeal under Section 19 of the Contempt of Courts Act is not maintainable, the said orders are open to challenge in an intra- court appeal as held in ***Midnapore People's Cooperative Bank Ltd.*** and ***Parents' Association of Students*** (*supra*). We are also of the view that the said orders though are not final orders in the Contempt case, they fall within the meaning of "judgment" for the purpose of appeal under Clause 10 of the Letters Patent since the same resulted in adjudication of rights and liabilities of the parties regarding Okhla property.

39. Therefore, we hold that the present appeal under Clause 10 of the Letters Patent is maintainable.

Consideration on merits

40. By the date of filing OMP No.383/2012 under Section 9 of the Arbitration and Conciliation Act, 1996, the arbitration proceedings were yet to be commenced. At that stage, the order dated 27.04.2012 came to be passed by this court by way of an interim order restraining the respondents No.2 to 12 therein from alienating, selling, transferring, mortgaging, encumbering, disposing of or in any manner dealing with their immovable properties till the next date of hearing.

41. On the next date of hearing, i.e., 04.09.2012, the OMP itself was disposed of continuing the injunction order dated 27.04.2012 till such time the arbitral tribunal passes an order on an application filed by either

party under Section 17 of the Arbitration and Conciliation Act, 1996 for appropriate interim relief including the variation/modification of the interim order dated 27.04.2012 passed by this Court.

42. Section 17 of the Arbitration Act empowers the Arbitral Tribunal to pass an interim order for protection of the subject matter of dispute on an application filed by a party to the arbitration. It is a matter of record that though VLS moved an application before the arbitral tribunal purportedly under Section 17 of the Act, the prayer was not for protection of subject matter of dispute, but certain other directions were sought for disclosure of the particulars of the shareholding of the respondents in terms of the orders dated 27.04.2012 and 04.09.2012 in OMP No.383/2012. It appears that no orders were passed on the said application till the conclusion of the proceedings before the Arbitral Tribunal.

43. Therefore, the appellants would contend that the orders dated 27.04.2012 and 04.09.2012 in OMP No.383/2012 were in operation till the arbitral award was passed on 02.03.2015 and thus the execution of the Conveyance Deed dated 10.06.2013 was in violation of the restraint orders dated 27.04.2012 and 04.09.2012. The defence of the respondents is that Southend not being a party either to the tripartite agreement dated 12.07.2007 or to the proceedings before the Arbitral Tribunal, the orders dated 27.04.2012 and 04.09.2012 are not binding on Southend during the pendency of the arbitration proceedings. It is also contended that since Okhla property, in respect of which the Conveyance Deed dated 10.06.2013 has been executed, is not the subject matter of the tripartite agreement dated 12.07.2007 as well as OMP No.383/2012, the execution

of the Conveyance Deed is not in violation of the orders passed in OMP No.383/2012.

44. Thus the question that requires consideration in the Contempt Case is whether the execution of Conveyance Deed dated 10.06.2013 by Southend in favour of Wonder Space was in violation of the restraint orders dated 27.04.2012 and 04.09.2012 in OMP No.383/2012. In case VLS succeeds to establish the allegations in the Contempt Case, an appropriate order would be passed in exercise of the jurisdiction to punish for contempt.

45. That being the legal position, the interim order dated 09.01.2014 came to be passed directing status quo to be maintained by Wonder Space in respect of Okhla property. The said direction is undoubtedly an order on merits of the dispute between the parties regarding their rights and liabilities under the tripartite agreement vis-a-vis Okhla property. Since adjudication of such rights and liabilities of the parties is not an issue in the Contempt proceedings we are of the view that the order dated 09.01.2014 is outside the scope of the proceedings for contempt.

46. Be that as it may, the rights and obligations of the parties to the tripartite agreement which was the subject matter of OMP No.383/2012 have already been decided by Arbitral Award dated 02.03.2015. OMP No.144/2015 filed by VLS under Section 9 of the Act after the award dated 02.03.2015 has also been disposed of and FAO(OS) No.295/2015 is now pending before the Division Bench against the said order. Pending the said appeal, there is an interim order that the respondent No.12 therein (Southend) shall keep full accounts with respect to the utilization of the monies received from Wonder Space.

47. In view of the said subsequent events, the order of status quo dated 09.01.2014 has virtually been rendered redundant. Even assuming that the Appellant needs further protection of the rights claimed by it in respect of Okhla property, it appears to us that the Appellant is not entitled to seek such protection in the contempt proceedings particularly by way of interim orders since the same would be outside the scope of contempt proceedings. Instead, it is open to the Appellant to avail the other remedies available under law either by moving an application in the pending appeal, i.e. FAO (OS) No. 295/2015 or by instituting appropriate fresh proceedings for protection of the rights claimed in respect of Okhla property.

48. Therefore, the order of the learned Single Judge in vacating the interim order dated 09.01.2014 cannot be found fault with. However, in view of the fact that while entertaining the present appeal, by order dated 20.05.2015, we directed both the parties to maintain status quo obtaining as on that date with regard to Okhla property in all respects and the same has been in operation all through, we consider it appropriate to continue the said order of status quo for a further period of four weeks from today. In the meanwhile, the parties are at liberty to avail other remedies available under law for protection of their rights, if so advised.

49. For the aforesaid reasons, though we do not find any justifiable reason to interfere with the order under appeal of the learned Single Judge dated 04.12.2014, the appeal is disposed of continuing the order of status quo granted by us on 20.05.2015 for a further period of four weeks from today.

50. We also make it clear that the findings recorded by the learned Single Judge on merits of the case in the order under appeal shall not come in the way of deciding the main contempt case.

51. The appeal is, accordingly, disposed of. There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J.

OCTOBER 20, 2015
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