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

+ **FAO(OS) 56/2015**

ANGLE INFRASTRUCTURE PVT. LTD. Appellant

Represented by: Mr.Akhil Sibal, Advocate
instructed by Ms.Bina Gupta,
Mr.Abhay Anand Jena and
Ms.Radhika Sharma, Advocates

versus

CAPITAL BUILDERS AND ORS Respondents

Represented by: Mr.Atul Sharma, Advocate with
Mr.Ravi Sharma and Mr.Chaitnya
Puri, Advocates for R-1
Mr.Ravinder Singh, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **12.02.2016**

1. Appellant's application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an interim measure against the respondent in terms of the Developers Right Agreement dated June 05, 2012 followed by a settlement agreement dated October 29, 2013 was disposed of by the learned Single Judge vide impugned order dated December 22, 2014.

2. A perusal of the impugned order would show that while discussing whether appellant had a prima-facie case, the learned Single Judge has proceeded to consider whether the Developers Right Agreement dated June 05, 2012 was superseded by the settlement agreement dated October 29,

2013. This would have impacted whether the petition under Section 9 of the Arbitration and Conciliation Act, 1996 was at all maintainable because the settlement agreement did not have an arbitration clause.

3. Proceeding to discuss said issue, we find that the impugned order has remained inchoate on said issue.

4. The reason is obvious. Neither counsel drew the attention of the learned Single Judge to the correct legal principle on which an issue concerning a dispute arising under an agreement resulting in an accord has to be decided if a party falls back on the original agreement to enforce the right and the other party takes the stand that the dispute has to be settled with reference to the accord.

5. The legal position is that an accord discharges the performance of obligations under the contract. A dispute pertaining to satisfaction furnishes a fresh and independent cause of action, until and unless it is provided that the performance of the satisfaction was a condition precedent for discharge under the contract. If promise is received in satisfaction, it is a good satisfaction, but if the performance and not the promise is intended to operate in satisfaction, then there will be no satisfaction without performance. Wherever there is an accord, obligations under the original contract would be discharged until and unless it is specifically provided that the performance of the satisfaction would discharge the obligations under the contract.

6. Learned counsel for the appellant states that the appellant does not wish to argue on the interim measure which appellant seeks, but since the impugned decision is likely to create a problem in the Arbitration Petition filed by the appellant invoking remedy under Section 11 of the Arbitration

and Conciliation Act, 1996, the appeal may be disposed of declaring the inchoate observations in the impugned order which, though not conclusive opine, but are suggestive of a finding that as per the learned Single Judge the dispute has to be with reference to the settlement agreement which does not have an arbitration clause and thus the dispute is non-arbitrable notwithstanding the Developer's Right Agreement having an arbitration clause.

7. Observations in para 10.2 and para 10.4 of the impugned order are declared to be non-conclusive determination by the learned Single Judge on the subject whether the Settlement Agreement was an accord of the kind which contained a promise to satisfy the obligations under the original contract and thus any satisfaction of the accord with reference to the promise reflected in the Settlement Agreement resulted in a dispute giving birth to a fresh cause of action.

8. The learned Single Judge who is seized of the application filed by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996 shall decide the same keeping in view the legal principle which we have enunciated in paragraph 5 above.

9. The appeal is disposed of in terms of the declaration in paragraph 7 above.

10. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 12, 2016

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