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

+ O.M.P.(I) (COMM.) 114/2016

TOTAL PROPERTY MAINTENANCE, LLP Petitioner
Through: Mr. Rajesh Bhardwaj and Mr. Ajaytej
Pal, Advs.

versus

S.S.CON-BUILD (P) LTD. Respondent
Through: Mr. Jayant Mehta and Ms. Shweta
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **11.05.2016**

I.A. 4498/2016

Exemption allowed subject to all just exceptions.

Application stands disposed of.

I.A. 5564/2016

This is an application under Section 151 CPC for early hearing of the
petition.

As the petitioner has filed a fresh I.A. being no. 5875/2016 seeking
the same relief, learned counsel for the petitioner wishes to withdraw the
present application.

The application is dismissed as withdrawn.

I.A. 5875/2016

This is an application under Section 151 CPC for early hearing of the petition.

Noting the contents made in the application, application is heard and allowed.

Consequently, the petition OMP (I) (COMM) 114/2016 is taken up for hearing.

I.A. 5875/2016 is disposed of.

O.M.P.(I) (COMM.) 114/2016

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 with the following prayers:

“a. pass an order of injunction in favour of the Petitioner and against the Respondent staying the Cancellation Letter dated March 03, 2016 and restraining the Respondent from taking any steps pursuant to the said Cancellation Letter dated March 03, 2016, till the passing of the arbitral award in the arbitration proceedings;

b. pass an order of injunction in favour of the Petitioner and against the Respondent, restraining the Respondent or any person claiming through or under it from in any manner whatsoever, directly or indirectly acting in breach of the registered Lease Deed dated September 14, 2015 or from creating any third party rights in the Premises in any manner concerning the Lease or from parting with possession of the Premises in favour of any third party in breach of the Registered Lease Deed dated

September 14, 2015, till the passing of the arbitral award in the arbitration proceedings;

c. pass an order of injunction in favour of the Petitioner and against the Respondent, restraining the Respondent or any person claiming through or under it from in any manner whatsoever, directly or indirectly, dealing with the Premises or from entering into any kind of agreement / arrangement with any third party in relation to or in connection with the Premises in breach of the registered Lease Deed dated September 14, 2015, till the passing of the arbitral award in the arbitration proceedings;

d. pass an order of injunction in favour of the Petitioner and against the Respondent restraining the Respondent from in any manner giving effect to the alleged allotment of areas/ units by the Respondent as alleged in the Respondent's Letter dated February 25, 2016 till the passing of the arbitral award in the arbitration proceedings as a just measure for protecting the valuable rights of the Petitioner in the interest of justice;

e. restrain the Respondent or it's representatives, assigns, successors, employees or any person claiming through or under it from creating hurdles in the ingress to and egress from the Premises of the Petitioner or it's staff and employees and from encroaching or disturbing the peaceful possession of the Petitioner over the Premises till the passing of the arbitral award;

f. pass ad interim ex-parte orders in terms of prayers (a), (b), (c), (d) and (e) above in favour of the Petitioner and against the Respondent;

g. grant costs of the present proceedings and of those incidental thereto in favour of the Petitioner and against the Respondent; and

h. pass such other and further order(s) as may deem fit and proper in the facts and circumstances of the present case, in favour of the Petitioner and against the Respondent.”

2. It is admitted position that the lease deed dated 14th September, 2015 has been cancelled by letter dated 3rd March, 2016. As the lease deed has been cancelled, learned counsel for the petitioner states that he does not press the relief at serial no. (a) as according to him this would be final relief, which the petitioner may seek before the learned Arbitrator. His statement is taken on record.

3. Mr. Jayant Mehta, learned counsel appearing on behalf of the respondent on advance notice states that the property in question, after issuance of letter dated 3rd March, 2016 has been, leased out to a third party. On the other hand, learned counsel for the petitioner states that it is only a portion of the property in question which has been leased out. Mr. Jayant Mehta, learned counsel for the respondent on instructions states that the possession of the complete property has been handed over to the third party.

4. Be that as it may, learned counsel for the petitioner states that for the purpose of this petition, he would only seek the relief that respondent would not create any third party rights in the property in question as claimed in Para (c) above.

5. After some submissions, learned counsel for the parties state that this Court may refer the disputes of the parties to the arbitration, by appointing an Arbitrator.

6. In view of the statement made by the learned counsel for the parties, I appoint Mr. S.M. Chopra, retired ADJ, who is on the panel of the Delhi International Arbitration Centre as sole Arbitrator to adjudicate the disputes arise between the parties in accordance with the Rules and Regulations of the Centre. The fee of the Arbitrator should also be regulated by the Rules made therein.

7. As some urgency has been shown by the learned counsel for the petitioner for seeking interim relief, it is directed that the Coordinator of the Delhi International Arbitration Centre on receipt a copy of this order shall immediately inform Mr. S.M. Chopra requesting him to enter the reference by fixing a date of hearing. The parties would be at liberty to contact the Coordinator, Delhi International Arbitration Centre, who shall ascertain from Mr. S.M. Chopra the date of hearing fixed by him and inform the same to the parties to enable them to appear before the learned Arbitrator on the date fixed. The petitioner would file an application under Section 17 of the Arbitration and Conciliation Act, 1996 before learned Arbitrator seeking the

relief which he has pressed for in this petition that the respondent may not create any third party rights in the property in question. The respondent shall be at liberty to take all such pleas as available on facts and in law including the maintainability of the proceedings before the learned Arbitrator.

8. Learned Arbitrator shall decide the application filed by the petitioner based on the pleadings filed by the parties.

9. It is made clear that this Court has not expressed any opinion on the merit of the disputes.

10. The petition is disposed of.

11. A copy of this order be given *dasti* to the learned counsels for the parties under the Signatures of the Court Master.

12. The dates already fixed, i.e., 18th May, 2016 and 23rd May, 2016 stand cancelled.

V. KAMESWAR RAO, J

MAY 11, 2016

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