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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB. A. (COMM.) 16/2016, IA Nos.5887/2016,5888/2016, 5889/2016, 5890/2016 & 8492/2016**

MALHAN CONSTRUCTION PVT. LTD. Appellant

Through: Mr S. K. Tandon, Advocate.

versus

KAWALJIT SINGH & ORS. Respondents

Through: Mr Abhinav Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.08.2016

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'Act') impugning an order dated 12.03.2016 (hereafter 'the impugned order') passed by the Arbitrator whereby the appellant's application under Section 17 of the Act was rejected.

2. The appellant had filed an application under Section 17(1) of the Act, *inter alia*, praying as under:-

"(a) Direct the respondents not to create any third party interest or any charge or lien or mortgage, sell or alienate any part of the said property etc. during the pendency of the above mentioned arbitration proceedings, in the interest of justice and equity;

(b) Also direct the respondents to deposit a sum of Rs.5

Crore as in the form of bank guarantee in favour of the claimant in order to protect the claim;”

3. The aforesaid prayers were premised on the sole allegation that the respondents were demarcating the land measuring 48.50 bighas at Hope Town, Dehradun into plots and selling the same. The appellant alleged that there was an understanding between the parties before the Arbitrator that no party shall create any third party interest or charge on the aforesaid property. On the aforesaid basis, the appellant claimed that an order should be passed for preservation of the aforesaid property and further security by way of a bank guarantee of ₹5 crores be provided to the appellant.

4. Admittedly, the claim made by the appellant before the Arbitrator was for a sum of ₹7.5 crores, that is, the claim made was a money claim. The appellant had not claimed any share in the aforesaid property or any other relief pertaining to the property in question. The appellant has also not made any allegation that the respondents were alienating their assets so as to denude their wealth and consequently frustrate any award that may be passed against them.

5. In the aforesaid context, the Arbitrator noted that the claim made by the appellant was a money claim and, therefore, the appellant would have recourse to executing the award as and when the same was passed; but, in the circumstances, no order under Section 17 of the Act for protection of the subject matter of the dispute could be passed as the subject matter of the dispute was not the land which was allegedly being sold by the respondents.

6. The learned counsel appearing for the appellant submits that certain

amounts of sums were admitted by the respondents as payable and, therefore, an order to secure the said sum ought to have been granted by the Arbitrator. He had further relied on the decision of the Bombay High Court in **Baker Hughes Singapore Pte. V. Shiv-Vani Oil and Gas Exploration Services Ltd.:** 2015 (1) ArbLR 155 (Bom) and drew the attention of this Court to paragraph 51 of the said judgment wherein the Court had observed that an Arbitral Tribunal is also empowered to make an interim award for a money claim on the basis of the admitted claim and/or acknowledged liability and, therefore, the Arbitral Tribunal also has power to grant interim measure so as to secure the claim which is subject matter of dispute before the Arbitral Tribunal.

7. In my view, the aforesaid judgment is of no assistance to the appellant. This is not a case where the appellant had approached the Arbitrator for making an interim award on the basis of any admission of liability stated to have been made by the respondents. The appellant had also not made out a case that the respondents were alienating its property which would frustrate the execution of the award that may be ultimately passed. As stated above, the application made by the appellant was premised solely on the basis that there was an understanding before the Arbitrator that the land in question would not be sold. In this context, the Arbitrator had clarified that no such understanding had been arrived at before the Arbitrator.

8. Undisputedly, an order to secure a claim can be passed by the Arbitrator if the same is warranted. An interim order for attachment of property can also be granted provided a case for the same is made out by the

applicant. In the present case, the averments made by the appellant in its application did not make out a case for attachment before judgement or for securing the claim. Apparently, the only contention advanced by the appellant before the Arbitrator was that interim orders as prayed were required for protecting the subject matter of the dispute. In the context of the aforesaid argument, the Arbitrator pointed out that the subject matter of the appellant's claim was not the land in question but a money claim. I find no infirmity with the order passed by the Arbitrator.

9. Accordingly, the appeal and all the pending applications are dismissed.

VIBHU BAKHRU, J

AUGUST 19, 2016
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