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

+ **ARB.A. 13/2016**

**SH. KUL BHUSHAN AHUJA**

..... Appellant

Through: Ms Geeta Luthra, Senior Advocate  
with Mr Rajesh Roshan, Mr H.C.  
Shukhja and Mr Shiron Shukhija,  
Advocates.

versus

**SH. LAKSHAY SACHDEVA & ORS.**

..... Respondents

Through: Mr Kirti Uppal, Senior Advocate with  
Mr Satish Sharma, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**29.08.2016**

**VIBHU BAKHRU, J**

**IA No.10444/2016**

1. Allowed, subject to all just exceptions.

**CAV 752/2016**

2. The respondent has entered appearance. The caveat stands discharged.

**ARB.A. 13/2016**

3. The Appellant has filed the present Appeal under Section 37 (2)(b) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning the interim order dated 02.08.2016 (hereafter 'the impugned order') passed by the Sole Arbitrator under Section 17 of the Act.

4. It is stated that the appellant is the sole owner of the property bearing No. 6, Shyam Cooperative House Building Society Ltd, colony known as Shyam Enclave, Delhi 110092 (hereafter 'the said property'). Admittedly, the appellant entered into a collaboration agreement dated 22.09.2010 with the respondents for development of the said property. In terms of the aforesaid agreement, the respondents were required to pay a sum of Rs.45 lakhs to the appellant and also reconstruct the entire property. The appellant claims that they received a sum of Rs.27.5 lacs but the respondents failed and neglected to pay the balance amount. The appellant alleges that construction of the property in question was grossly delayed by the respondents and also that they left it incomplete.

5. In view of the aforesaid allegations, the appellant filed its claim before the Arbitrator. The respondents have made a counter-claim against the appellant.

6. Three applications under Section 17 of the Act were filed by the parties; one by the appellant and two by the respondents. After hearing the parties, the Arbitrator disposed of the three applications by a common order 02.08.2016, inter alia, directing as under:-

“In the facts and circumstances of the case I am of the view that the appropriate interim direction to the claimant would be not to create any kind of third party interest during the pendency of these proceedings in respect of the second floor and to keep the second floor locked and to deposit its keys with the Coordinator of DAC.

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The only security which can suffice in the facts and

circumstances of the case is a bank guarantee (to be kept alive till the conclusion of these proceedings) for a sum of Rs.1 crore, which includes the amount which the claimant has already received from the respondents and the balance amount is rough estimate of cost of construction of three storeyed house (subject to final determination after full trial) which the claimant must furnish to the satisfaction of the Co-ordinator of DAC. This figure is exclusive of the speculative damages being claimed by the respondents."

7. Ms Geeta Luthra, Learned Senior Counsel appearing for the appellant submits that the direction to deposit the keys of the second floor as well as to issue a bank guarantee for Rs.1 crore is perverse and at best, the respondents were entitled to receive the second floor of the said property and that too if they had duly performed the contract.

8. The respondents have their own tale of woe. However, after considering the dispute, it is obvious that respondents would not be entitled to the amount spent on construction as well as the second floor of the said property. Therefore, it would be apposite to direct the appellant to either furnish a bank guarantee for the amount spent by the respondents in construction of the said property - as has been directed by the Arbitrator - or to deposit the keys of the second floor of the property; but the appellant cannot be directed to do both.

9. Mr Kirti Uppal, learned Senior Counsel appearing for the respondents (on caveat) submits, on instructions, that it would be fair if the keys of the second floor are deposited with the Co-ordinator, Delhi International Arbitration Centre as directed and the direction to furnish a bank guarantee for a sum of Rs.1 crore be waived.

10. In my view, the aforesaid position would also be just and fair as it is an admitted case that at best the respondents would be entitled to the second floor. Thus, undisputedly, the second floor of the said property is required to be protected. The Sole Arbitrator has also spelt out the circumstances which have persuaded him to pass the order for deposit of the keys of the second floor rather than issuing a simple restraint order. I find no reason to interfere with the same.

11. Accordingly, the direction to furnish a bank guarantee for Rs.1 Crore is set aside and the impugned order is modified to the aforesaid extent.

12. The present appeal is disposed of in the aforesaid terms. Consequently, the application for interim relief (IA 10433/2016) also does not survive and is disposed of.

**AUGUST 29, 2016**  
pkv

**VIBHU BAKHRU, J**