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

\+ **<u>O.M.P.(I) (COMM.) 368/2016</u>**

JAI BHAGWAN SINGHAL & ORS. ..... Petitioners

Through : Mr Vishnu Sharma, Sonika Tyagi and Mr Amarjeet Singh, Advocates with plaintiff No.1.

versus

DIWAN HOUSING FINANCE CO. LTD. ..... Respondent

Through : Mr Shweta Kapoor and Mr Sushil Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **02.11.2016**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, inter alia, praying as under:-

> "(a) pass an ex-parte ad-interim order pending the commencement of and during the arbitration proceedings, restraining the respondent, its agents, affiliates, servants, representatives, successors in the interest from taking possession of, leasing, assigning, selling, disposing of, transferring or alienating of property bearing No. i.e. Plot No. 20, Road No. 23, East Punjabi Bagh, Delhi -110026.
>
> (b) pass an ex-parte ad-interim order pending and commencement of and during the arbitration proceedings, restraining the respondent, its agents, affiliates, servants, representatives, successors in the interest from taking possession of, leasing, assigning, selling, disposing of transferring or alienating of property bearing no. Plot No. 20, Road No. 23, East Punjabi Bagh, Delhi-110026."

2. The petitioners state that petitioner No.1 was approached by the officials of the respondent Diwan Housing Finance Company Ltd. (hereafter 'the DHFCL') for availing a loan of ₹7 crores. According to the petitioner, the loan offered was to carry a floating rate of interest @ 12.5 % per annum. However, the DHFCL did not sanction the loan of ₹ 7 crores but limited the loan to ₹4.95 crores with interest @ 13.75% per annum for a period of 15 years. The said loan was secured by a mortgage of a Plot No. 20, Road No. 23, East Punjabi Bagh, Delhi -110026. The petitioner states that at the relevant time the mortgaged property was under construction and they were assured that further loan would be sanctioned as and when the construction progressed. It is further averred in the petition that the constructed property would cost more than ₹14 crores.

3. The petitioners further state that the loan was to be repaid in equated monthly instalments and the petitioners were duly discharging their payment obligations and have paid a total sum of ₹1,95,00,000/- (approximately) in addition to ₹12 lakhs as processing fee.

4. The petitioners submit that they although their requirement was ₹7 crores, DHFCL had sanctioned a loan of only ₹ 4.95 crores; resultantly, the petitioners could not run their business effectively and suffered heavy financial losses and as a consequence thereof the petitioners had to sell some of their properties.

5. Petitioner No.1 further states that it requested the DHFCL to release the first and the third floor of the property in question in order that the said

two floors could be sold and the loan could be discharged. However, the DHFCL has refused to grant such permission.

6. The learned counsel appearing for the petitioners contented that the petitioners are ready and willing to pay the loan, however, have repeatedly written to DHFCL to clear the loan and release the mortgaged property but the DHFCL has declined to do so.

7. In view of the statement that the petitioner was willing to pay the entire amount and yet the DHFCL was threatening to take possession of the property in question, this court by an order dated 19.09.2016 restrained the DHFCL from taking any coercive steps in respect of the property in question, namely, Plot No. 20, Road No. 23, East Punjabi Bagh, Delhi - 110026.

8. The learned counsel for the DHFCL has now submitted a detailed statement indicating that a sum of ₹4,95,00,000/- was disbursed and the petitioner has repaid a sum of ₹1,92,62,930/- which includes interest amounting to ₹1,63,96,219/- and the principal amount of ₹28,13,721/-. The said statement indicates that approximately ₹4,66,86,279/- of the principal is still outstanding. This would be in addition to the interest that is due and payable.

9. The learned counsel has stated that the petitioner would be willing to pay a sum of ₹3,00,00,000/-

10. In so far as the disputes between the parties are concerned, this court is not inclined to examine the same at this stage. However, it is clear that

even according to the petitioner at least a sum of ₹ 3 crores is due and payable. In the circumstances it is directed that the parties shall maintain status quo regarding the possession and title of the property in question and DHFCL shall not take any coercive steps against the property bearing No. Plot No. 20, Road No. 23, East Punjabi Bagh, Delhi -110026. However this is subject to the petitioner making a payment of ₹ 3 crores to DHFCL within a period of three weeks from today

11. It is clarified that if the aforesaid payment of ₹ 3 crores is not made, DHFCL would be free to take such steps as may be advised for the recovery of its dues.

12. It is also clarified that the aforesaid orders are without prejudice to the rights and contentions of the parties and the parties shall be free to agitate all issues before the Arbitral Tribunal. The present order shall be subject to any order that may be passed by the Arbitral Tribunal.

13. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 02, 2016
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