

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

64

+

ARB. A. (COMM.) 38/2016

TOTAL PROPERTY MAINTENANCE LLP

..... Petitioner

Through: Mr. Akhil Sibal with Ms. Sonia Dubey,
Mr. Shatadru Chakraborty, Mr. Kirish Gandhi and
Mr. Anurag Singh, Advocates.

versus

S.S CON- BUILD PVT. LTD & ORS

..... Respondents

Through: Mr. Jayant K. Mehta with Mr. Saurabh
D. Karan Singh, Mrs.Sureni Bhagat, Mr. Abhijeet
Srivastava and Mr. Shaurya Vardhan, Advocates
for R-1.

Mr. Arjun Taneja, Advocate for R-2.

Mr. Diggaj Pathak, Advocate for R-3.

CORAM: JUSTICE S. MURALIDHAR

ORDER

%

19.10.2016

IA Nos. 12843/2016 & 12844/2016 (exemptions)

1. Exemptions allowed subject to all just exceptions.

Arb. A.(COMM) 38/2016 & IA Nos. 12841/2016 (directions), 12842/2016 (appointment of Special Officer)

2. This is an appeal under Section 37 (2) (b) of the Arbitration and Conciliation Act, 1996 ('Act') against the impugned order dated 27th August 2016 passed by the learned Arbitrator in the application filed by the Appellant herein/Claimant under Section 17 of the Act.

3. Notice. Mr. Jayant K. Mehta, Mr. Arjun Taneja and Mr. Diggaj Pathak, learned counsels accept notice on behalf of Respondent Nos. 1, 2 and 3 respectively.

4. It must be noticed here at the first instance that it was at the stage of considering a petition under Section 9 of the Act filed by the Appellant herein, being OMP (I) (Comm) No. 114 of 2016, that this Court by its order dated 11th May 2016 appointed a sole Arbitrator. In that order, the Court noted in particular the relief sought by the Appellant that the Respondent should not create any third party rights in the property in question. The Court also noted that the Appellant would file an application under Section 17 of the Act “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.”

5. The Court has been shown a copy of the application under Section 17 of the Act where *inter alia* reliefs were sought in regard to the Respondents being required to maintain *status quo* with regard to the premises described in the lease deed dated 14th September 2015 and a further interim relief restraining the Respondents from executing any covenants/further covenants of lease deed dated 12th March 2016.

6. From a perusal of the impugned order dated 27th August 2016 of the learned Arbitrator it is difficult to discern any reasoning which persuaded the learned Arbitrator to decline the above reliefs.

7. Mr. Akhil Sibal, learned counsel for the Appellant takes exception to the

only possible reason mentioned by the learned Arbitrator that: “in its pleadings, the Claimant has monetized its alleged ‘Loss of Revenue’, in its perception. In the given circumstances, as of now, claimant is not entitled to any of the interim measures as prayed for.....” He submits that the above submission was without prejudice to the other reliefs sought.

8. The Court finds that the learned Arbitrator has not only failed to set out the reliefs sought in the application under Section 17 of the Act but also has not considered it appropriate to give any reason whatsoever for rejecting those reliefs. As pointed out by Mr. Jayant K. Mehta, learned counsel for Respondent No. 1, there is also no mention in the impugned order of the submissions in opposition by the Respondents in opposition to the application under Section 17 of the Act and the documents placed on record by them.

9. The Court does not at this stage consider it necessary or appropriate express any opinion on the submissions made before the Court on merits for the simple reason that the Court does not have the benefit of the reasons that weighed with the learned Arbitrator in rejecting the application under Section 17 of the Act.

10. In addition to the reliefs prayed for in the application under Section 17 of the Act, Mr. Sibal drew the attention of the Court to the prayers made in IA 12482 of 2016 seeking the appointment of a 'Special Officer' to inspect the premises. Admittedly, this relief was not sought before the learned Arbitrator. Mr. Sibal states that the Appellant will file before the learned

Arbitrator an application to that effect before the next date of hearing.

11. The Court is informed that the matter is listed before the learned Arbitrator tomorrow, i.e., 20th October 2016 for further proceedings. From the order passed by the learned Arbitrator on 7th September 2016, it is seen that it has been directed that if the Claimant proposes to adduce oral evidence, "then affidavit in evidence of all its witnesses be filed in the DAC by 21st September 2016 with advance copy to the counsel for the Respondent No. 1 and in the event of the affidavit in evidence being filed, the witnesses of the Claimant shall be in attendance on 20th October 2016 at 10 am." Mr. Sibal assures the Court that the Appellant will proceed with the arguments on the application under Section 17 of the Act before the learned Arbitrator tomorrow itself, i.e., 20th October 2016 without seeking any unnecessary adjournment in the matter.

12. In that view of the matter, the following directions are issued:

- (i) the impugned order dated 27th August 2016 passed by the learned Arbitrator is set aside and the application under Section 17 of the Act filed by the Appellant/Claimant is restored to the file of the learned Arbitrator;
- (ii) the learned Arbitrator will proceed with the arguments on the application under Section 17 of the Act tomorrow itself and neither party will seek unnecessary adjournments. The learned Arbitrator will endeavour to hear and dispose of the said application within a period of one month from tomorrow;
- (iii) any further interim reliefs that the Appellant may wish to seek

should be done by way of an application which should be presented tomorrow itself before the learned Arbitrator; and

(iv) it is made clear that the Court has not expressed any opinion on the merits of the contentions of either party with regard to the interim reliefs sought by the Appellant.

13. The appeal and the pending applications are disposed of in the above terms.

14. Order be given *dasti* to learned counsel for the parties under the signature of the Court Master.

S. MURALIDHAR, J

OCTOBER 19, 2016

Rm