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

+ **FAO(OS) (COMM) 138/2016**

UDAY BAHADUR & ANR

..... Appellant

Represented by: Mr.I.S.Alag, Mr. J.S.Lamba,
Mr.R.S.Bisht, Mr.Ahmad
Sarfraz, and Ms.Ritu Chobey,
Advocates.

versus

KOPASTIN HOLDINGS LIMITED

..... Respondent

Represented by: Mr.Kapil Arora & Mr.Madhav
Khosla, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **09.12.2016**

CM No.45878/2016

Allowed subject to just exceptions.

FAO(OS) (COMM) 138/2016 & CM No.45877/2016

1. Though not on caveat counsel as above appears for the respondent.
2. We find that Mr.Kapil Arora, Advocate who appears for the respondent was the counsel for the respondent before the learned Single Judge in the capacity of respondent being the petitioner.
3. The grievance in the appeal is to the fact that after notice when the ad-interim injunction order was passed on October 21, 2016, no reasons were recorded by the learned Single Judge. Indeed, we find no reasons. The order dated April 25, 2016 reads as under:-

“The abovementioned petition has been filed by the petitioner for seeking various interim orders against the respondents.

Respondents are served. The petitioner is pressing for an interim order. On the other hand, the learned counsel for the respondents is seeking two weeks time to file the reply.

In view of the averments made in the petition and the documents placed on the record, I am of the view that the petitioner has made out a prima-facie case for the grant of an interim order to some extent at this stage. The balance of convenience also lies in favour of the petitioner and against the respondents. In case the interim order is not passed, the petitioner will suffer an irreparable loss and injury. Under these circumstances, it is directed that till the next date of hearing, the respondents shall maintain the status-quo in respect of approximately 11 acres of land at Village Nistauli, Loni Road, Ghaziabad as more specifically stated in the Schedule-A filed along with the petition, or to transfer right, title, interest or create any third party rights in relation thereto. The respondent No.1 is also restrained from disposing off, alienate and create any third party interest in respect of his undivided share in the house property, i.e.C-424, Defence Colony, New Delhi-110024.

Let the reply be filed within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

List this matter on 12th August, 2016.

Learned counsel for the respondents has clarified by making a statement that out of the suit property of 11 acres, only .10 acre is to be sold and the remaining land has already been sold even before 2013. Learned counsel for the petitioner denies the said fact.”

4. The impugned order October 21, 2016, disposes of the petition filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 1996. The reasoning is as under:-

“OMP (I) (Comm.) No.117/2016

6. *Learned counsel for the Petitioner points out that the application filed by the Petitioner for the appointment of an Arbitrator is coming up before the Supreme Court on 24th October, 2016.*

7. *The interim order passed by this Court on 25th April, 2016 is directed to continue till such time the Arbitrator to be appointed varies or modifies the said order in accordance with law in an application that may be filed by either party.*

8. *The petition is disposed of.*

9. *The next date of 24th October, 2016 is cancelled.”*

5. We find grave injustice having been caused to the appellant in as much as neither reasons are mentioned in the order dated April 25, 2016 as to why ad-interim injunction was being granted and that too in spite of the fact that it was the first date after notice was served and the learned counsel for appellant had sought two weeks’ time to file a reply.

6. As regards order of October 21, 2016 we find that as per sub-clause (3) of Section 9 of the Arbitration and Conciliation Act, 1996, once the arbitrator tribunal has been constituted the Court shall not entertain an application under sub-Section (1), unless the Court finds that circumstances exists which may not render the remedy provided under Section 17 efficacious.

7. The impugned order dated October 21, 2016 notes that the arbitrator

is yet to be appointed and the petition seeking appointment of arbitrator is pending before the Supreme Court. The impugned order dated October 21, 2016 further notes that the matter before the Supreme Court would be taken up on October 24, 2016.

8. We have asked learned counsel for parties as to what happened before the Supreme Court on October 24, 2016. Learned counsel state that the arbitrator is yet to be appointed. The next date has not been notified before the Supreme Court.

9. Under the circumstances we are constrained to allow the appeal and set aside the impugned order October 21, 2016.

10. OMP (COMM) (I) No.117/2016 is restored before the learned Single Judge for decision on merits.

11. The appellant has filed reply to OMP (COMM) (I) No.117/2016. Learned counsel for respondent states that rejoinder to the reply filed is not desired to be filed by the respondent.

12. Under the circumstances we direct that OMP (COMM) (I) No.117/2016 would be listed before the Roster Bench on January 17, 2017.

13. We clarified that ad-interim order April 25, 2016 shall enure. Date in January is fixed with the consent of learned counsel for parties.

14. No cost.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

DECEMBER 09, 2016

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