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

+ O.M.P.(I) 312/2015

SHRI ASHWANI KUMAR KHANNA Petitioner
Through Mr.Nakul Sachdeva, Adv .with
Ms.Bhaavita Modi, Adv.

versus

RAJESH VERMA Respondent
Through Mr.Sanjeev Ailawadi, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% **29.07.2016**

I have been informed that Arbitral Tribunal has already been constituted. Under Section 9(3) of Arbitration and Conciliation Act, 1996. It is mandatory that once the Arbitral 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 of the Act. Learned counsel for the respondent has not denied the fact that before the Arbitral Tribunal, the Statement of Claim has been filed. The issue No.3 has already been framed which read as under:

“(iii) Whether the Claimant paid Rs.32,00,000/- (Rs.32 lacs) as advance to the Respondent as alleged by the Claimant and not paid as alleged by the Respondent ? OPC/OPR”

One of the contentions of learned counsel for the respondent is that while issuing the notice and passing of *ad-interim* order, the earlier Bench

has specifically mentioned that the petitioner has paid around 85% of the sale consideration to the respondent for purchase of the right in the suit property. He submits that the said fact is disputed by his client and it may be clarified, otherwise it would prejudice the case of the respondent before the Arbitral Tribunal in view of the stand taken. There is a merit in the submissions of learned counsel for the respondent; the said part of the order is clarified to the extent that it was the case of the petitioner and not the finding of the Court. The part of the order i.e., the interim order passed on 3rd July, 2015 shall continue. The liberty is granted to move the application, if so desired by the respondent before the Arbitral Tribunal for vacation or modification of the order. The present petition is accordingly disposed of with these directions.

MANMOHAN SINGH, J.

JULY 29, 2016/vp