

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

COCF No.1851 of 2015(O&M)

Date of Decision:-15.03.2017

M/s BE Office Automation Products Pvt. Ltd.

.....Petitioner.

Versus

Vijay Gupta, Director of M/s Orris Infrastructure Pvt. Ltd. & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Deepender Singh, Advocate for the Petitioner.

Mr. Surjeet Bhadu, Advocate for the respondents.

JASWANT SINGH, J.(ORAL)

This petition has been filed under Section 12 of the contempt of Courts Act, 1971 (for short, 'The Act') for the alleged willful disobedience of order dated 20.11.2014 passed by Additional District Judge, Gurgaon (Annexure P-1), while exercising powers under Section 9 of the Arbitration and Conciliation Act, 1996.

It is contended by the learned Counsel for petitioner that petitioner and respondents had entered into a collaboration agreement dated 22nd of October 2007 for sale of apartments, villas, commercial spaces etc. However, some disputes cropped up between the parties and petitioner executed a Deed of Cancellation dated 27th of August 2012 whereby an irrevocable Power of Attorney dated 22nd of October 2007 was cancelled.

Since the dispute could not be resolved, both the parties filed applications under section 9 of the Arbitration and Conciliation Act 1996 before the Ld. Additional District and Sessions Judge, Gurgaon for an ad interim relief. The matter was heard and a common order dated 20th of November 2014 was passed by the Ld. ADJ, Gurgaon whereby, as an interim arrangement only it was ordered that till the final adjudication by the Arbitrator, respondents were restrained from creating any third-party interest in respect of the apartments, villas, commercial areas etc and they were further restrained from receiving any money in respect of any sale of apartments, villas, commercial space etc.

It is not in dispute that the final award has been passed on 12.12.2016, whereby petitioner herein has been held entitled for 82 apartments and qua the remaining 9 apartments in the residential complex, the respondents have been given an option to choose any of the 9 apartments, so that in total the entitlement is to the extent of 141357 sq ft.

Ld. counsel for the petitioner has vehemently argued that despite the interim directions given by the Ld. Additional District and Sessions Judge, Gurgaon, respondents have violated the order by issuing letters to allottees, seeking money for the purpose of granting the possession.

On being put to notice, respondents have filed a detailed reply wherein it has been mentioned that Order dated 20th of November 2014 passed under section 9 of the Arbitration and Conciliation Act, 1996 was an interim measure imposing restraint upon the company to create any third-party interest or to receive any money in respect of profit in the entire project. It is mentioned that the said order dated 22/11/2014 was

challenged by the company before this court in FAO No. 9901/2014 and the said order passed by Ld. Additional District Judge was modified by this court vide its interim order dated 08.12.2014 (Annexure are A-1). As per the said order, this court had limited the scope of restraint to the number of flats mentioned in Annexure A-5 which is minutes of the meeting dated 24th of January 2011, containing number of 82 apartments. Therefore, the restraint if any was only qua the said 82 apartments and not for the entire project. It was further averred that in the meanwhile, retired judge of Hon'ble Supreme Court Sh. C.K Prasad was appointed as the sole arbitrator by this court, who vide its interim arbitral award dated 19th of August 2015, appointed Sh. Ritesh Ghosh, Advocate as local Commissioner to identify the flats mentioned in Annexure R-1 to the said interim arbitral award. The copy of the interim arbitral award is appended Annexure are R-3. As per the said Annexure, the list of units provided were same as that of minutes of meeting dated 24th of January 2011. However, the Ld. Sole arbitrator passed final award on 12th of December 2016 by which the petitioners herein were held entitled to 82 apartments mentioned in the minutes of meeting dated 24th of January 2011. Subsequently, the petitioner filed an application before the Deputy Commissioner, Gurgaon and has taken possession of all 82 flats from the company through due process of law on 18th of January 2017 and 9th of February 2017, to the entire satisfaction of the final award in respect of flats coming to the share of petitioner herein. It was thus submitted that the company has neither created any third-party rights nor has received any money in respect of the said identified apartments mentioned in the order Annexure A5 passed by this court in a

FAO No. 9901/2014 and as recorded in order dated 8th of December 2014. Thus, prayer was made for discharge of the rule by submitting that there has no violation of order dated 20.11.2014, which was modified by this Court on 08.12.2014 and subsequently became inoperative due to passing of interim award by sole arbitrator on 19.08.2015.

After hearing Ld. counsel for the parties and perusing the paper book, this court is of the opinion that present petition is nothing but a luxurious litigation initiated by petitioner, without any substance and therefore is liable to be dismissed.

It is apparent from the record that the basic order dated 20.11.2014 was an interim arrangement, which was to be operative till the final adjudication by arbitrator. On appointment of the arbitrator, the arbitrator was seized of the matter and it was well within his powers to make any order as he deems fit. The petitioner and the company moved application under section 17 of the Arbitration and Conciliation Act 1996 for grant of interim relief and the said interim relief was disposed of in the following terms:-

*“ A. The document executed and registered by the counter claimant with the nomenclature “cancellation of GPA” with the Sub Registrar, Farrukhnagar, be treated as nonest and bad in law. **However, this will entitle the claimant only to deal with its 2/3rd share, as mentioned in the collaboration agreement.***

B. I direct the claimant to furnish to the counter claimant the CAD and working drawing in PDF format of the project by August 21, 2015.

C. I appoint Shri Ritesh Kumar Ghosh, Advocate [+91-9300106468] as Local Commissioner. He in the presence of an architect to be nominate by each party, shall

identify the facts as mentioned in Annexure-1 to this order and given the status report thereof. He shall be paid remuneration of Rs.1.10 Lakhs per day to be borne by both the parties in equal share. A sum of Rs.1.10 Lakhs each by both the parties be deposited in his account within 3 days from today. The Local Commissioner by the parties immediately.

D. The claimant till further order shall not in any manner deal with any of the flats mentioned in Annexure -1 of this order.

E. The claimant is further directed to maintain adequate inventory in terms of flat/shops/villas etc. so as to be in a position to honour the Award, in case the Counter claimant is held to be so entitled.

F. Before the next date of sitting, the claimant shall obtain certificate from the financial institution/banks indicating that the flats mentioned in Annexure-1 are unencumbered having no charge or lien over them. ”

Thus it can be seen that the company was free to deal with its 2/3rd share and was prohibited from dealing with property as listed as Annexure A-1.

The contention of the petitioner that during the period when the interim order dated 20th of November 2014 was passed by ADJ, Gurgaon, and interim award was passed by the Arbitrator, there was a violation of the order dated 20th of November 2014, as third-party rights were being created, is concerned, suffice it to say that the said contention is completely misconceived. Admittedly, respondents had filed FAO No. 9901 of 2014 challenging the order dated 20.11.2014, which was modified by this Court on 08.12.2014 and the right of petitioner was protected to the extent of 82 flats and this relief continued till 19.05.2015, when the said

FAO was withdrawn. It is also not in dispute that interim award was passed

by the Sole Arbitrator on 19.08.2015, again granting him the same relief as granted by this Court on 08.12.2014. In essence, the allegations as made by petitioner that there is a violation of order passed by Ld. ADJ, Gurgaon is completely unsubstantiated and not made out.

There is another angle to look into the matter. By applying for an interim relief before the Arbitrator, the petitioner had himself forgone his right for claiming the benefit interim relief granted by the Ld. Additional District Judge and since the interim award dated 19th of August 2015 was passed, there cannot be said to be any question of violation of any order as alleged by petitioner.

In view of the above, this court is of the opinion that the present petition is nothing but an ego issue, raised by the petitioner and in this view of the matter, no fault can be found in the conduct of the respondents who have worked/acted well within their rights.

Consequently, present petition is hereby dismissed and the Rule stands discharged accordingly.

(JASWANT SINGH)
JUDGE

March 15, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>