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

+ **FAO(OS) (COMM) 56/2017**

DINESH GUPTA & ANR

..... Appellants

Represented by: Mr.Gaurav Mitra, Advocate with
Ms.Rashmita Roy Choudhary and
Ms.Nandita Abrot, Advocates

versus

MAMAN SINGH & ORS

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **08.03.2017**

CM No.9463/2017

Allowed subject to just exceptions.

FAO (OS) (COMM) No.56/2017

1. Learned counsel for the appellants states that Sh.S.K.Kaushik (Retd.ADJ Delhi) has been appointed as an Arbitrator. He has entered upon reference. He has notified March 25, 2017 as the date for the parties to appear before him.

2. Appellants are aggrieved by the order dated February 01, 2017 dismissing, in limine, petition filed by the appellants under Section 9 of the Arbitration and Conciliation Act, 1996. Interim measure prayed by the appellants was to restrain the respondents from forfeiting ₹8,42,91,661/-

paid as earnest money-cum-part sale consideration under a written agreement to sell dated December 09, 2015. Further interim measure prayed was to restrain the respondents from creating third party interest in the 23.16 bigha land agreed to be sold as detailed in the agreement to sell.

3. The learned Single Judge has noted that converted into acres the land ad-measured 4.95818 acres. Rate per acre agreed was ₹17,00,51,000/-. Learned Single Judge has noted that 45% of the balance had to be paid within 9 months and the remainder within 12 months. The two dates would translate to September 15, 2016 and December 15, 2016. The payments were not made.

4. The learned Single Judge has prima-facie opined it to be the case of appellants being in breach of performing their obligations under the agreement.

5. As per the appellants they withheld the payment inasmuch as the office of the Assessor and Collector, South Delhi Municipal Corporation had issued a notice on June 13, 2016 as per which property tax dues for years together qua the property were not paid.

6. The property tax dues claimed by the Corporation are not known as the appellants have not disclosed the same either in the appeal or in the pleadings before the learned Single Judge.

7. In our opinion, since an Arbitrator has been appointed the appellants should avail the remedy before the Arbitrator by seeking an interim measure.

8. As regards the observations made by the learned Single Judge in the impugned order, suffice it to state that they are tentative and prima-facie. They are sans a discussion of the respective case of the parties and thus we

declare that the learned Arbitrator would not be influenced by any observation made by the learned Single Judge in the impugned order.

9. In view of the clarification aforementioned learned counsel for the appellants states that the appeal is not being pressed for the reason the appellants would now seek an interim measure before the learned Arbitrator.

10. The appeal is disposed of.

11. No cost.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

MARCH 08, 2017

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