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

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Judgment delivered on: 28.08.2017

+ ARB.A.(COMM.) 21/2017

JITENDRA KUMAR CHOPRA

..... Appellant

versus

SHIV SARAN & SONS HUF & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr P.K.Agrawal, Ms Mercy Hussain and Ms Tannya Sharma

For the Respondents/Claimants: Mr Yakesh Anand and Ms Sonam Anand.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

28.08.2017

SANJEEV SACHDEVA, J. (ORAL)

IA No.9704/2017(exemption)

Allowed, subject to all just exceptions.

ARB. A. (COMM.) 21/2017

1. The Appellant, by this Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), impugns order dated 03.08.2017 passed by the Arbitral Tribunal.

2. By order dated 03.08.2017, the Arbitral Tribunal, on an application of the respondent/claimant, under Section 17 of the Act, had directed that the Appellant shall not sell or transfer one flat in property No.W-99, Greater Kailash, Part-II, New Delhi, without intimation and approval of the Tribunal.

3. The said order has been passed on the application under Section 17 of the Act of the respondent, wherein the respondent had sought a restraint on the Appellant from selling first and second floor of property No. W-99, Greater Kailash, Part-II, New Delhi, or any part thereof or in the alternative to direct the Appellant to deposit a Fixed Deposit in the sum of Rs.4 crores, which was stated to be equivalent to the claim of the respondent.

4. The application is premised on the ground that in case the applicant, who is a builder and who has constructed the building in Collaboration with the Respondent/claimant, who was the owner of the plot, were to sell his allocation in the property, the respondent would not be in a position to execute the Award, if it were to be passed in favour of the respondent.

5. Learned counsel for the Appellant submits that the Tribunal has erred in putting an embargo/ restraint on sale of one Flat as the cost of the Flat is much higher than the claim made by the respondent.

6. It is further contended that the claims are not maintainable and the Appellant also has a counter-claim.

7. Learned counsel, however, submits that if the only issue is with regard to provision of a security, the Appellant, without prejudice to his rights and contentions, would be willing to provide a security of an appropriate amount so as to secure the alleged claims of the respondent as and when the Appellant intends to sell off the Flat.

8. Learned counsel for the respondent submits that he has no objection so long as the claim amount is secured.

9. In view of the above, the Appeal is disposed of with the following directions:-

- (i) The Appellant would be at liberty to negotiate for the sale of the flats falling to his allocation, however, before the Appellant creates any third party rights or accepts any advance payment,

the Appellant shall approach the Tribunal for determination of the amount of security that the Appellant would be required to furnish to the Tribunal, towards the alleged claims of the respondent/claimant.

- (ii) Only on furnishing the security amount, to be determined by the Tribunal, the Appellant would be at liberty to transfer his allocation.

10. It is clarified that this court has neither considered nor expressed any opinion on the merits of the respective claims of either the Respondent or the appellant.

11. The Appeal is accordingly disposed of in the above terms. There shall be no order as to costs.

12. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 28, 2017

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