

\$~OS-22

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

+ ARB.A. 3/2017

SH.JITENDER GOPAL ..... Appellant  
Through Mr.Mohit Aggarwal, Adv.

versus

SH.INDER MOHAN SHARMA & ORS. .... Respondents  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**  
% **11.09.2017**

**IA No.10405 /2017 (exemption)**

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

**ARB.A. 3/2017 and IA No. 10405/2017 (stay)**

1. This petition is filed under Section 37(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking to impugn the order dated 24.07.2017 passed by the learned Arbitrator whereby the application filed by the petitioner under Section 17 of the Act was dismissed.

2. Some of the relevant facts are that an agreement to sell was executed between respondent No.1 and the petitioner and respondents No. 2 to 9 on 12.03.2010 regarding Shop No. 1486 ES, Pyare Lal Building, Main Road Chandni Chowk, Delhi admeasuring 1407 sq. ft. on the ground floor and 734

sq. ft. on the mezzanine floor. Disputes having arisen between the parties, the claimant/respondent No.1 filed a petition before this court under Section 9 of the Act. This Court on 10.08.2011 directed the petitioner and respondents No. 2 to 9 to maintain status quo in relation to the shop in question. On 15.11.2016 this court noted that an arbitrator had been appointed to adjudicate the disputes between the parties. Accordingly, the interim order passed on 10.08.2011 was made absolute till the time the learned Arbitrator varies, modifies or vacates the said order in accordance with law on an application under Section 17 of the Act moved by either of the parties.

3. On 01.06.2017, the petitioner filed the present application praying that respondent No. 9-Sh.Virender Gopal be restrained from selling, creating third party interest or parting with possession or any part of the property in question of which he is a joint owner having 1/3<sup>rd</sup> undivided share in the property. The directions were also sought to be made to the concerned Sub-Registrar not to entertain any registration of sale deed etc. regarding the shop in question.

4. By the impugned order the learned Arbitrator dismissed the application of the petitioner. The impugned order notes various aspects of the matter. Firstly, it notes that the execution of the agreement dated 12.03.2010 has not been disputed by any of the parties. The petitioner who was respondent No. 2 before the learned Arbitrator has 1/6<sup>th</sup> undivided share in the property. The impugned order also notes that there is no dispute that on 19.07.2017, respondent No.9 sold his undivided share in the property in favour of the claimant/respondent No. 1 and have executed a sale deed which stands registered before the concerned Sub-Registrar. The order

further notes that the respondents other than the petitioner had entered into a settlement which has been filed before the Delhi International Arbitration Centre where the arbitration proceedings are pending. The order further notes as far as respondents No. 2 to 9 are concerned, they have sold their undivided share in the aforesaid property on 09.03.2017 before the filing of the present application to respondent No. 1. On the issue of possession, the order holds that a tenant was in possession of the property and he could have handed over possession of the property to any one of the shareholders as none of the respondents are owners of a defined portion of the property. As per respondents No. 2 to 9, the tenant had handed over possession to them and thereafter, they have handed over possession to the claimant/respondent No. 1. Noting the above position, the learned Arbitrator has dismissed the application of the petitioner also noting that it is the own case of the petitioner that he was never in possession of the property.

5. I have heard learned counsel for the petitioner. He has made the following submissions:-

(i) He submits that the act of respondent No. 9 in selling the property to respondent No. 1 is in violation of the interim orders of this court including orders dated 15.11.2016.

(ii) He further submits that the findings recorded by the learned Arbitrator that the sale deed executed by respondent No. 9 stands registered on 19.07.2017 is incorrect as the sale deed is lying under objections with the Sub-Registrar.

(iii) He further submits that the possession of the property has been wrongly handed over to respondent No.1.

6. I may note that despite a specific reliance of the impugned order on

the deed of settlement arrived at among the respondents, copy of the settlement has not been placed on record.

7. As far as violation of the interim orders is concerned, it is an admitted fact that the petitioner has already filed a contempt which is pending before the court and notice has been issued on 24.07.2017. In these circumstances, it would not be proper for this court to deal with the contention of the petitioner that the effected sale has been done in violation of the interim order lest it prejudices the case of the petitioner in the contempt petition.

8. The next plea of the petitioner is that the sale deed executed by respondent has not been registered is not borne out from the record. As per the impugned order, the sale deed stands registered on 19.07.2017. Hence, this plea of the petitioner cannot be accepted.

9. It is also a matter of fact that on the issue of possession, the impugned order has already held that the petitioner was never in possession of the property. Conspectus of facts would show that all the co-owners of the property except the petitioner have voluntarily entered into a settlement with respondent No 1 and have sold their respective shares in the property to respondent No. 1. The petitioner, it seems, is the only co-owner not interested in selling his share. His share in the property is intact. There can be no reason to interfere in the impugned order. There is no merit in the present petition and the same is dismissed.

10. Needless to add, observations of the learned Arbitrator are only a prima facie in view and will not bind the parties at the time of final adjudication of the claim petitions.

**JAYANT NATH, J**

**SEPTEMBER 11, 2017/rb**