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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION (L) NO.370 OF 2019

Western Habitat ... Applicant.

V/s.

Truly Creative Developers Private
Limited and ors ... Respondents

- Mr. Mayur Khandeparkar a/w Ms.Rati Lodha i/by Legal, for the Petitioner.
- Mr. Cyrus Ardeshir with Mr. Sachin Dudalkar, Muraru Madekar i/by M/s Madekar & Co., for respondent No.1.
- Mr. Rajiv Singh, Sameer Chitnis, Mrs. Manjiri S. Chitnis, Ms.Madhura Kulkarni i/by Chitnis & Co., for respondent No.2.

CORAM : G. S. KULKARNI, J.

DATE : 4th APRIL, 2019.

P.C. :

1] Heard Mr. Khandeparkar, learned counsel for the petitioner, Mr. Cyrus Ardeshir, for respondent No.1 and Mr. Rajiv Singh, for respondent No.2.

2] This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short called as, "ACA), whereby the petitioner prays for interim reliefs pending the arbitration proceedings.

3] The facts are :-

Respondent No.1 had entered into a development agreement

dated 31st December, 2014 with the petitioner. It is not in dispute that the development agreement pertains to redevelopment of a slum scheme. It also appears to be not in dispute that respondent No.1 by notice dated 19th March, 2018 has terminated the development agreement. Thus, disputes and differences have arisen between the petitioner and respondent No.1. about a year back under the development agreement.

4] Learned counsel for respondent No. 2 states that the termination notice is not received by his client respondent No.2. There is correspondence between the petitioner and respondent No.1, after the termination notice.

5] The case of the petitioner is that the respondent No.1 was undertaking the development work alongwith respondent No.2. It is contended that there are substantial rights which were created in favour of the petitioner in the project in question. The petitioner has also placed on record an order passed by the Chief Executive Officer, Slum Rehabilitation Authority; wherein the authority, considering some issues of disputes between respondent No.1 and the petitioner made following observations:-

"The Respondent No.2 M/s Western Habitate was taken as Co-Developer as per their financial Agreement dated 31.12.2014. It appears that there has arisen disputes between the Developer and Co-Developer. The Agreement and arrangement between them seems to have been terminated on or about 16.01.2018. The parties

i.e. Respondent No.1 and Respondent No.2 has also gone into litigation. As such the final outcome of the litigation will be binding on the both the parties and they will have to settle the same by complying the final adjudication to the monetary and other entitlement as may be directed by the adjudicating forum. Though the respondent No.2 M/s Western Habitate claims to undertake the competition of the Scheme, its status is that of a Co-Developer and presently the relationship with Respondent No.2 has gone into litigation. Therefore, for the reasons stated above, it will be in the interest of early completion of the scheme to allow the owner and developer M/s Truly Creative Developer to complete the Scheme.

Order

1. The developer M/s Truly Creative Developer shall take all the necessary steps to obtain further necessary permission and approval as per rules and regulations at earliest.
2. The request of respondent No.2 M/s Western Habitat for permission to allow to complete the scheme independently, is hereby rejected.
3. All the claims of M/s Western Habitat as may be settled by the final adjudication shall be reimbursed by the Respondent No.1, M/s Truly Creative Developer.

Date: SRA/Dycol./OW/2019/11614 sd/-
Place Chief Executive Officer.
No. Slum Rehabilitation Authority.
Date: 07 MAR 2019"

5] The above order indicates that the SRA has recognized respondent No.1 as developer for the slum project in question.

6] Today, by a separate order as passed by this Court in Commercial Arbitration Application (L) No.123 of 2019, an arbitral tribunal has been appointed to adjudicate the disputes and differences

between the parties, under the agreement in question. Considering the facts of the case, it would be appropriate that all these issues are gone into by the arbitral tribunal.

6] Learned counsel for the petitioner, however, prays that although an arbitral tribunal is constituted, this Court should consider the prayers of the petitioner for interim relief in terms of prayer clause

(d) which reads thus :-

"(d) Pending the initiation and final disposal of the arbitration proceedings between the parties, by an order and injunction of this Hon'ble Court, the Respondent No.1, its directors, officers, agents and servants be restrained from disturbing the possession of the Petitioner to the subject property and the transit land".

7] I have heard learned counsel for the parties on these issues, as also I perused the record. In my opinion, considering the facts and circumstances of the case and in the interest of justice, it would be appropriate that all these issues which have arisen between the parties including all the prayers for interim reliefs be adjudicated by the arbitral tribunal by keeping open all the contentions of the parties. The petitioner is, therefore, at liberty to present this petition as an application under Section 17 of the ACA.

8] The arbitral tribunal shall consider Section 17 Application as expeditiously as possible and pass appropriate ad-interim order and/or

interim order, within two weeks on filing of the Section 17 application. Respondents are permitted to place on record their reply -affidavit, if they so desire, within one week of the presentation of the Section 17 Application. Ordered accordingly.

9] Keeping open all the contentions of the parties including on merits, the petition is accordingly disposed of in the above terms. No costs.

10] Mr. Khandeparkar, learned counsel for the petitioner at this stage there is some urgency to move learned arbitral tribunal. The petitioner is accordingly permitted to urgently move arbitral tribunal seeking such appropriate ad-interim/interim reliefs as permissible in law.

[G. S. KULKARNI, J]