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

ARBITRATION PETITION NO.891 OF 2018

Chhaya Vishnu Tirodkar ... Petitioner.
V/s.
Navkar Group Pvt. Ltd and 2 ors ... Respondents

Mr. Aseem Naphade a/w Mr. Arsh Mishra i/by M.V. Kini,
for the Petitioner.
Ms. Sindhu S. Edachali, for respondent

CORAM : G. S. KULKARNI, J.

DATE : 18th June 2019.

P.C. :

1] Heard Mr. Naphade, learned counsel for the petitioner and Ms. Sindhu Edachali, for the respondent.

2] This is a petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "Act"); whereby the petitioner has prayed for interim measures pending the arbitral proceedings. The cause for the prayers as made in this petition is stated to be arising under an agreement for sale dated 19th May, 2015. The prayers as made in the petition reads thus:-

"(a)

(b)

(c) Pending the initiation of Arbitration proceedings until four weeks after passage of the award, the Respondent, their agents or authorized representatives be restrained from creating third party rights with reference to the suit project located at plot No.6, Odhav Nagar Village, Dahisar, Tal. Borivali under Survey No.213, hissa No.1 and Survey No.218, Hissa No.3 Village Dahisar.

(d) pending the initiation of Arbitration proceeding until four weeks after passage of the award, the Respondents, their agents or authorized representatives be restrained from proceeding with the construction of the suit project located at plot No.6, Odhav Nagar Village, Dahisar, Tal. Borivali under Survey No.213, hissa No.1 and Survey No.218, Hissa No.3 Village Dahisar.

(e) Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to order and direct the Respondents to produce all permissions/approvals received from the Brihan Mumbai Municipal and other authorities with reference to the suit project as enumerated in clause 1 of the Power of Attorney dated 8th May 2015 and Clause No.c of the agreement for sale deed dated 19th May, 2015"

3] The petitioner claims that under this agreement the respondent intended to sell to the petitioner a flat admeasuring 600 sq. feet in their proposed construction which was undertaken by the respondent. Mr. Naphade, learned counsel for the petitioner submits that in paragraph No.3 of the said agreement, it has been clearly recorded that an amount of Rs.1,21,00,000/- being consideration is already received by the respondent from the petitioner.

4] Learned counsel for the respondent has, however, submitted that no

consideration of any such amount, was received by the respondent. Learned counsel for the respondent submits that in fact this document was not to be acted upon, and this document was executed as part of a deal, in sale of the land whereby; petitioner one of the co-owner of the land alongwith the other owners, had agreed for sale of the land in favour of the respondent, under another agreement of sale dated 8th May, 2015. Learned counsel for the respondent contends that once payment under the said agreement for sale of land was received by the petitioner, this agreement in question being pressed into service was rendered inconsequential. Learned counsel for the respondent has referred to clause 2 of the said agreement dated 8 May 2015 to show that an amount of Rs.2,25,00,000/-was payable to the share of the petitioner. Clause No.2 of the agreement reads thus :-

"2. Kum Chhaya Vishnu Tirodkar - an amount of Rs.2,25,00,000/-to be paid in cheque equally in the following manner.

- i) Rs.25,00,000/- at the time of execution of the agreement for sale, irrevocable General Power of Attorney and Indemnity Bond.
- ii) balance Rs.2,00,00,000/- on conveyance".

5] Learned counsel for the respondent would submit that an amount of Rs.25,00,000/- was paid to the petitioner on the date of execution of the said agreement dated 8th May, 2015 and balance of Rs.2 crore was thereafter to be paid to the petitioner at the time of conveyance, so entered into between the parties and the other co-owners of the plot. It is submitted

that ex-facie on a reading of the agreement for sale dated 19 May 2015, it is clear that said agreement dated 19 May 2015, was not to be acted upon inasmuch as there are blanks at several places as the agreement does not specify the area, flat number, as also name of building is also not shown, draft IOD was never obtained. It is submitted that most importantly an amount of Rs.1,21,00,000/- was never paid under the said agreement for sale, to bring about a situation that any flat would be required to be sold to the petitioner by the respondent.

6] Having perused the record and having heard learned counsel for the parties, I am not persuaded to accept the submissions of Mr. Naphade learned counsel for the petitioner. The agreement dated 8th May, 2015, on the basis of which the petitioner claims to have rights in a flat, proposed to be constructed by the respondent, itself would not prima facie inspire any confidence. It clearly appears that this document was prepared as part of deal, whereby the petitioner alongwith the other co-owners had agreed to sell the land in favour of the respondent as the petitioner has also received an amount of Rs.2,25,00,000/-. The contention as urged on behalf of the petitioner that an amount of Rs.1,21,00,000/- being the consideration for the flat was paid to the respondent, was in fact never paid much less under the said agreement. Mr. Naphade, learned counsel for the petitioner is not

in a position to show any material to show that such payment was made by the petitioner to the respondent. In the absence of any such material a mere reference to the receipt of the said amount in the agreement is inconsequential to prima facie hold that the petitioner would be entitled for such substantive reliefs as prayed for.

7] The fact remains that there is already a conveyance of the land which is executed in favour of the respondent. It is also quite clear that there are number of blanks under the said agreement, which is executed prior to the conveyance. Even assuming that in the event the petitioner is to receive any tenement under this agreement, such tenement as receivable cannot be ascertained in any manner whatsoever. Such is the vagueness, ambiguity and incompleteness of the agreement. Thus, prima facie there is much substance in the contention as urged on behalf of respondent that this document was not to be acted upon.

8] Mr. Naphade's contention that the Court should direct the respondent to furnish details, so that the dates and several other details which are left blank in the agreement, can be filled in/incorporated, so that the agreement can be submitted for payment of stamp duty surely cannot be accepted. This argument as urged on behalf of the petitioner is in fact quite

adventurous. The Court certainly cannot pass such an order so that one party to the document can unilaterally fill up the blanks in the documents. The document was stated to be admittedly executed between the parties under the signature of both parties. It would not be permissible for the petitioner to unilaterally fill up and/or incorporate details in the said extended documents, even for the purpose of stamp duty and registration. Such act on the part of the petitioner would be in fact doing something to the document not agreed between the parties. The Court, thus, cannot pass an order as prayed by Mr. Naphade, learned counsel for the petitioner.

9] For all these reasons, I am not inclined to grant any reliefs as prayed for in the petition.

10] The petition is rejected. No cost.

[G. S. KULKARNI, J]