

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.No.1188 of 2020
and C.M.P.Nos.7944 and 7411 of 2020

M/s.Olympia Opaline Flat
Owners Association (OOOA),
Having its Office at Amethyst Stilt,
Olympia Opaline, Phase I,
Old Mahabalipuram Road, Navalur,
Chennai - 603 103. Tamil Nadu ... Appellant

versus

Olympia Infratech, a Unit of
Olympia Tech Park (Chennai) Private Limited,
Having its registered Office at
1, Sidco Industrial Estate,
Guindy, Chennai - 600 032. Respondent

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the impugned order dated 16.06.2020 made in I.A.No.1 of 2020 in Arbitration Case No.5 of 2019 on the file of the Arbitral Tribunal consisting of the Sole Arbitrator Hon'ble Justice K.Chandru, Former Judge, High Court of Madras.

For Appellant : Mr.Nithyaesh Natraj

For Respondent : Mr.M.S.Krishnan,
Senior Counsel
for M/s.Fox Mandal & Associates

J U D G M E N T

This appeal has been filed as against the order of the learned Arbitrator dated 16.06.2020, restraining the appellant from preventing the use of common passage as per the Joint Development Agreement entered into between the respondent and the appellant. However, the appellant Association disputes such Agreement.

2. The main contention of the learned counsel for the appellant is that the respondent has filed an application similar to one filed in the year 2020,

seeking the same relief. Whereas in the year 2019, application having claimed the same relief and they are not pressed the same. However, suddenly sought a similar relief in 2020 and obtained an interim order. Challenging the interim order, the present appeal has been filed.

3. After hearing the submissions made by the learned counsel for the appellant and the learned Senior Counsel for the respondent, this Court is of the view that this appeal itself can be disposed of, without going into the merits and demerits of the case, since the issue involved in this matter is only with regard to the interim order and with regard to the use of common passage, which admittedly governed by the contract entered into between the parties. But the learned Senior Counsel submitted that the respondent intends to use the common passage only for the purpose of development of his business by taking their Officers, Purchasers and other Technicians. Those things cannot be prevented by others and it is also made clear that the respondent shall bring his Purchasers and visit the area through the common passage till 8.00p.m.

4. While passing the interim order, the learned Arbitrator taking note of the spot visit report and ultimately, passed an order. Besides the learned Arbitrator also put the respondent on terms by seeking undertaking by themselves. In pursuant to the same, an affidavit of undertaking dated 12.06.2020 has also filed by the respondent, wherein, in paragraph nos.4 and 5, the respondent had affirmed that in the disputed passage, they would not ply the heavy vehicles like lorries, concrete mixers, etc. However, in paragraph no.6, they affirmed that in the unlikely event, if any damage is caused to the common passage by using the heavy vehicles like lorries, concrete mixers, etc., they undertakes to rectify the same at their own cost.

5. The learned counsel for the appellant submitted that the respondent has given undertaking not to use heavy vehicles through the common passage in paragraph no.6 of the affidavit is contrary to the undertaking and that portion may be removed. If the respondent is not ply the heavy vehicles like lorries, concrete mixers, etc. through common passage, they have no difficulty and rest of the matters would be agitated before the learned Arbitrator.

6. The learned Senior Counsel for the respondent fairly submitted that paragraph no.6 may be removed from the affidavit of undertaking filed by the

respondent and this appeal can be disposed of and the matter may be directed to post before the learned Arbitrator and the parties are at liberty to agitate their rights before the learned Arbitrator.

7. Since the interim relief has been passed after elaborate discussions of the contract as well as the spot visit made by the learned Arbitrator, this Court is of the view that the entire interim order need not be disturbed except the affidavit of undertaking given by the respondent, particularly, paragraph no.6 alone is to be removed. If that is removed, the affidavit of undertaking given by the respondent, namely, paragraph nos.4 and 5, particularly, with reference to the use of heavy vehicles and concrete mixers, etc. through the common passage, there won't be any grievance to the respondent.

8. In such view of the matter and the affidavit of undertaking given by the respondent dated 12.06.2020, paragraph no.6 alone is removed. In rest of the order passed by the learned Arbitrator is confirmed and this appeal is disposed of. Hope the parties will show utmost co-operation to the learned Arbitrator in finalising the proceedings without unnecessary adjournments.

9. With these observations, this Civil Miscellaneous Appeal is disposed of. Consequently, connected Petitions are closed. However, there is no order as to costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

sri
To

1.The Hon'ble Justice K.Chandru (Retd)
Sole Arbitrator,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras-104.

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SPD(CO)
CB(17/08/2020)