A.No.1910 of 2020

P.T. ASHA, J,

This application has been filed by the applicant for the following relief:

(a)Order prohibiting the garnishee/3rd respondent from making payment of Rs.9 lakhs or any amount to the respondents 1 and 2, or to their men, agents, representatives or to any one claiming on the respondents 1 and 2 behalf and restrain the respondents or their men, agents's representatives or any one claiming on behalf of the respondents 1 and 2 from receiving a sum of Rs.9 lakhs or any amount from the garnishee/respondent and further direct the 3rd respondent garnishee to release Rs.9 lakhs lying in Loan Account No.624254992/1/RUK in favour of the applicant

(b)grant injunction restraining the respondents from alienating or encumbering the B schedule mentioned property pending disposal of the arbitration proceedings

(c)direct the respondents 1 and 2 to furnish security to the tune of Rs.37,38,101/- failing which this Court may be pleased to pass an order of attachment of the schedule B property.

2.The facts in brief which are necessary to dispose of the application are as follows:

The applicant would submit that initially the respondents 1 and 2 paid Rs.7.11 lakhs as advance. For the balance amount, the respondents availed home loan of Rs.46 lakhs from the 3rd respondent Bank. The 3rd respondent Bank released Rs.37 lakhs. Out of 37 lakhs, a sum of Rs.12,44,400/- was credited towards cost of the land. Remaining amount of Rs.24,55,600/- was credited towards cost of construction. Thus, out of Rs.45,55,500/- which is payable towards construction Agreement the respondents have paid only Rs.31,66,600/-. Thus, the respondents are still liable to pay Rs.13,88,600/- towards the Construction Agreement.

3.The learned counsel for the applicant would contend that the respondents 1 and 2 has availed housing loan from the 3rd respondent to make payment to the applicant and a sum of Rs.9 lakhs is yet to be released by the 3rd respondent Bank. The respondents 1 and 2 had clearly admitted in the Legal Notice dated 02.01.2018 that Rs.9,23,000/- is due and payable to the applicant. The applicant was informed by the 3rd respondent Bank that the respondents 1 and 2 has instructed the 3rd respondent not to release the sum of Rs. 9Lakhs in favour of the applicant. The respondents 1 and 2 have no claim over the said amount. Therefore, the applicant has moved this application to restrain the 3rd respondent Bank from releasing the sum of Rs.9 lakhs to the applicant.

4.The 3rd respondent Bank has filed counter affidavit *inter alia* contending that out of the sanction sum of Rs.46 lakhs only Rs.37 lakhs was disbursed and since there was default in the payment of the equated monthly installments the 3rd respondent has refused to release further finance to the1st and 2nd respondents. As on date, the outstanding in the loan account to the Bank is over Rs.37,98,240/-. Therefore, the respondent Bank has no intention of disbursing any financial assistance to the respondents 1 and 2 and no money to the respondents 1 and 2 is available with the 3rd respondent and the application deserves to be dismissed. The applicant has filed this application only on the ground that as against the sanction loan of Rs.46 lakhs only a sum of Rs.37 lakhs has been disbursed and therefore, they still remain a sum of Rs.9 lakhs.

5.Considering the counter of the 3rd respondent, it is clearly evident that no amount of the respondents 1 and 2 is available with the 3rd respondent. That apart, the decision to disburse the entire sanction of loan is entirely with the Bank. The Bank has clearly contended that as on date, the applicant owes money to the Bank.

In the light of the above, there is no merits in the applications and Hence, this application is dismissed.

30.11.2020

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P.T. ASHA, J,

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