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

+ O.M.P.(I) 4/2020 & I.A. 4438/2020, I.A. 4439/2020

NANDINI BHATIA

..... Petitioner

Through: Mr. Mohit Chaudhary and Ms.
Srishti Gupta, Advs.

versus

NAVIL RATISH KADWADKAR

..... Respondent

Through: Mr. Sanjoy Ghose with Ms.
Urvi Mohan, Adv. for the
respondent Mr. Puneet Bajaj,
Adv. for the complainant

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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18.06.2020

(by video-conferencing)

1. This is a petition, preferred by the petitioner-Nandini Bhatia, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "1996 Act").

2. According to the recital of facts in the petition, the petitioner and the respondent were married and, subsequently, have been estranged since 2016.

3. It appears that the petitioner had filed various cases against the respondent, inter alia, Section 12 of the Protection of Women from Domestic Violence Act, 2005, Section 125 of the Code of Criminal

Procedure Code, 1973 and Section 498-A and 406 read with Section 34 of Indian Penal Code (IPC).

4. We are not, however, particularly concerned with the said litigations in the present case.

5. During the course of these proceedings, Bail Appl. 471/2019 was preferred, by the respondent, before this Court.

6. The present petition asserts that, in the said proceedings, the respondent undertook to pay ₹ 1.25 lakhs per month, as maintenance to the petitioner alongwith fees for the school education of the daughter of the petitioner and the respondent.

7. The petitioner asserts that, though the said amounts were paid, by the respondent, till December, 2019, there has been no payment by the respondent, thereafter.

8. It appears that matter was referred for mediation, but that the efforts proved futile.

9. The petitioner further states that, on 17th October, 2019, an irrevocable Family Settlement was entered into, between the petitioner and the respondent, according to which an amount of ₹ 9.75 crores was payable by the respondent to the petitioner.

10. It is further asserted in the petition, that clause 8 of the

irrevocable family settlement, dated 17th October, 2019, contained a clause whereby disputes between the parties were referable for arbitration by Mr. S.S. Handa, (Retd.) District & Sessions Judge.

11. It is also asserted that, pursuant thereto, on 21st October, 2019, a cheque of ₹ 9.75 crores was, in fact, issued by the respondent, in favour of the petitioner, but was dishonoured on 23rd October, 2019, on the ground of insufficient funds. consequent to which the petitioner has initiated proceedings against the respondent under Section 138 of the Negotiable Instrument Act, 1881, before the learned Metropolitan Magistrate, Saket, asserting that she has no other source of income.

12. This petition has been preferred by the petitioner under Section 9 of the 1996 Act, the prayer clause in which reads as under:

“a. Pass an order directing Respondent to make admitted payment of Rs.1.25 Lacs/Month towards maintenance (from Jan 2020 till date) and further pay agreed school fee for the child, in terms of the Intimation sent by school, on urgent basis,

b. Pass an order granting ad-interim injunction in favour of the Petitioner and against the Respondent by securing the amount in dispute by way of attachment of any moveable and/or immovable property(ies) worth Rs. 9.75 Crores and/or

c. Pass an order directing the Respondent to continue paying the agreed amount of Rs.1.25 Lacs towards maintenance along with the school fee of the child till disposal of arbitration and/or

d. Pass any other appropriate orders, directions that this Hon’ble Court may deem fit in the facts and circumstances of the present case.”

13. In response to a query from the Bench, Mr. Mohit Chaudhary, learned counsel for the petitioner, submits that, in fact, Mr. S.S.Handa, the learned sole arbitrator, has already been appointed and has entered on the reference.

14. That being so, this petition would not be maintainable, in view of Section 9(3) of the 1996 Act and the petitioner would, if at all, have to move the learned sole arbitrator, under Section 17 thereof.

15. On the last date of hearing, Mr. Mohit Chaudhary, learned counsel for the petitioner, had submitted that he has invoked Section 9 of the 1996 Act, as owing to the currently prevailing COVID-2019 pandemic and the restrictions that have resulted as a consequent thereof, it would be difficult for him to move the learned sole arbitrator under Section 17 thereof. However, subsequently, it appears that the learned sole arbitrator has agreed to consider the application under Section 17 of the 1996 Act, if moved by the applicant.

16. That being so, it is clear that no occasion arises, for this Court, to pass any order in the present proceedings, especially in view of the bar contained in Section 9 (3) of the 1996 Act, which reads thus:

“Section 9. Interim measures, etc., by Court.

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(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

17. Mr. Sanjoy Ghose, learned counsel appearing for the respondent, however, seriously contests the very genuineness of the alleged irrevocable Family Settlement, dated 17th October, 2019, and consequently, of the appointment of the learned sole arbitrator, therein, and the jurisdiction of the learned sole arbitrator to adjudicate on the dispute.

18. He submits that it is preposterous to assume that his client would have agreed to pay an amount of ₹ 9.75 crores and that the irrevocable Family Settlement was never consciously or voluntarily entered into, by his client.

19. He, therefore, questions the very jurisdiction of the learned sole arbitrator to adjudicate on this dispute, and presses for this objection being taken on record, so that this order be not treated as any assent, on his part, to the proceedings before learned sole arbitrator, or the maintainability of the application under Section 17, proposed to be moved by the petitioner before him.

20. The objection is taken on record. This Court, however, abstains from returning any finding thereon.

21. The said objections, and their validity, are kept open and it shall be open to the respondent to raise these objections before the learned sole arbitrator by any means known to law.

22. Subject to the above observations, the present petition is

disposed of.

23. Copy of this judgment be uploaded on the website as soon as possible and also forwarded to the counsel for the parties via email.

JUNE 18, 2020

dsn

C. HARI SHANKAR, J



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