

O.A.No.729 of 2020

P.T.ASHA, J.,

This application is filed for an injunction restraining the respondents / their men / servants / representatives or agents from dealing with the B - schedule property in any manner in order to protect the interest of the applicant.

2. The applicant and the respondent company had entered into a Joint Development Agreement dated 20.02.2006 in and by which the 1st respondent Company had undertaken to build an IT park in the property belonging to the applicant to an extent of 1,11,390 Sq.ft. of built up area consisting of basement, stilt and 8 floors.

3. The applicant would contend that none of the obligations imposed on the respondent under the JDA was fulfilled by them. In

fact, the respondent had failed to obtain the planning permission and it was the applicant who had approached this Court and got orders from the CMDA to re-consider the application for planning permission. Without the planning permission, the 1st respondent had completed the construction in all aspects in respect of the portions that fell to their share to maintain the share of the respondent as base skeleton. Though the 1st respondent agreed to rent out the floors belonging to the applicant and had entered into a lease deed dated 03.12.2008 they had failed to remit the rental amounts although they had sublet the same and are receiving the rents.

4. Therefore, the applicant had invoked the arbitral clause and issued notice on 03.12.2020 calling upon the respondents to give consent for nomination of Honourable Mr. Justice N. Paul Vasantha Kumar, Retired Chief Justice of Jammu and Kashmir High Court as the arbitrator. There was however no response to the same. Therefore, the

applicant has moved an application under Section 11 of the Arbitration and Conciliation Act for appointment of an arbitrator.

5. It is the case of the applicant that the respondent is attempting to alienate the B – Schedule property and if they succeed in doing so, the applicant would suffer serious prejudice. The records would reveal that though the applications for obtaining the necessary permissions was the onus of the respondent they have not taken any steps in this direction and it is the applicant who has been processing the same. There appears to be a lot of lapses on the part of the respondent. The respondent has completed and occupied its portion of the property and has let the property which fell to the share of the applicant without completing the entire work so as to make it habitable.

6. There are several letters and correspondence from the applicant to the respondent, to which there has been no response. The

order of the CMDA dated 15.10.2014 would also indicate that the construction put up is in deviation of plan approved by the CMDA. The respondent who had entered into a lease agreement dated 03.12.2008 with the applicant would indicate that amounts payable by the respondent to the applicant are also not paid.

7. Therefore, a serious dispute has been arisen between the parties with reference to the schedule mentioned property, which is the subject matter of the arbitral agreement. Therefore, there is a necessity to preserve the subject matter of arbitral agreement.

8. In these circumstances, there shall be an order of ad interim injunction restraining the respondents, their men, agents etc., from alienating or otherwise dealing with the property more fully described in the B – Schedule to the Judges summons till 01.03.2021.

9. Notice. Private notice is also permitted.

09.02.2021

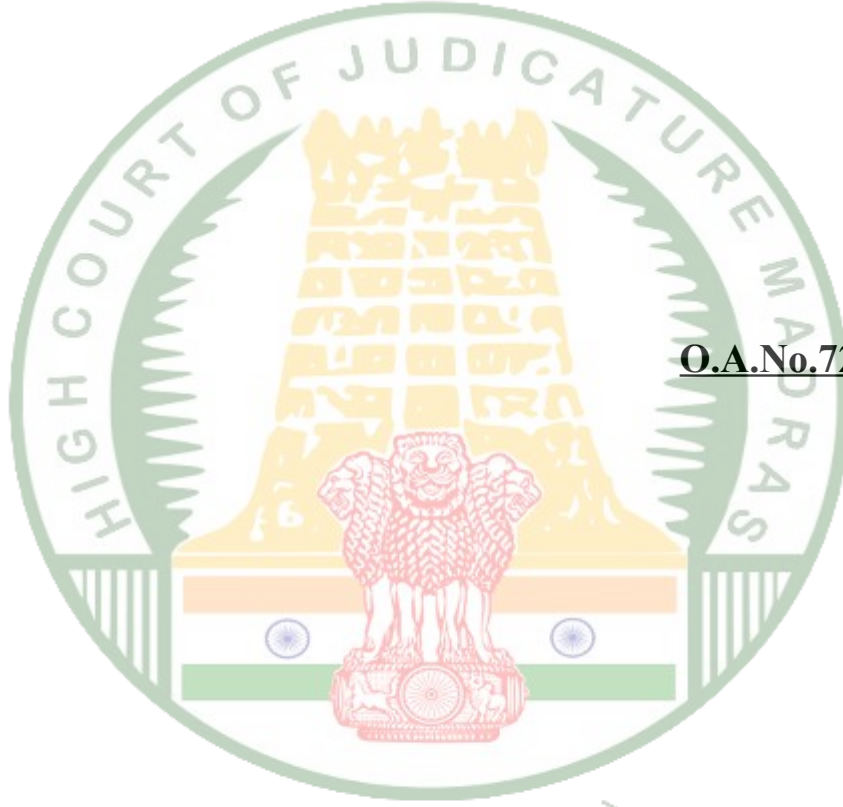
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