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“to issue an order of interim injunction restraining the respondents, their men, agents and assignors from disturbing the petitioner's peaceful possession and engaging in the transfer, sale, mortgage, or alienation, or in any manner whatsoever dealing with the immovable property morefully described in the Schedule to the Judges Summons being vacant land measuring and extent of 16.20 Ares or 40 cents comprised in Survey No.150B/1A2A and Vacant Land measuring an extent of 1.80 Ares or 4.5 cents and as per document 1996 Sq.ft in Survey No.150B/3C2, in all aggregating total land measuring an extent of 18 Ares or 44.46 cents in Karapakkam Village, Sholinganallur Taluk, Kancheepuram District, Tamil Nadu and situate within the Registration District of Chennai-South and Registration of Sub-district of Neelangarai, in any manner, until the pending adjudication and disposal of the Arbitration proceedings to be initiated by this petitioner against the respondents and grant such other interim relief of protection that may be necessary to protect the interest of the petitioner.”



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2. The first respondent appears to have entered into a Joint Venture Agreement with M/s.Marg Realities Limited and had executed a Power of Attorney dated 04.02.2005 in favour of the said company. Thereafter, a fresh agreement was signed in respect of the same property between the applicant and the first respondent on 23.11.2012. The agreement contemplates an arbitration Clause for resolving the dispute between the applicant and the first respondent herein. Same reads as under:-

“Clause 38:

That, in the event of any disputes or difference of opinion, in the matter of interpretation, execution, of carrying out the objects and functions of the works the same shall be resolved through mutual discussions. When the disputes or differences of opinion remain unsolved through mutual discussions, the same shall be decided by the Arbitrator/Arbitrators duly appointed by the parties who shall decide the dispute in accordance with the Arbitration and Conciliation Act, 1996 then in force at the time of dispute and the venue of the Arbitration will be Chennai.”



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WEB COPY 3. The agreement also states that the Memorandum of Understanding dated 23.11.2012 and the Joint Venture Agreement shall become effective upon receipt of planning approval by the concerned authorities and in the event of its failure, both parties shall revert back to their original position and this Joint Venture Agreement shall become null and void.

4. It appears that the land which is subject matter of the above agreements has not been still developed. The first respondent had earlier executed the Power of Attorney in favour of the petitioner on 13.12.2012 registered as Document No.477 of 2013. The first respondent however canceled the said Power of Attorney executed in favour of the petitioner by a deed of cancellation on 29.04.2014 registered as Document No.2868 of 2014. The first respondent however gave a letter of undertaking dated 16.05.2014, wherein, the first respondent reiterated that he will not disturb the possession and



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development of the property given to the first respondent under agreement dated 23.11.2012.

5. The first respondent further stated that he will undertake to register a fresh Power of Attorney in favour of the first respondent on the same terms and conditions of the Power of Attorney dated 13.12.2012 bearing Document No.477 of 2013 immediately had receipt 60% of the pending payment from the petitioner.

6. It appears that although there is no arrangements for any payment under the Joint Venture Agreement dated 23.11.2012. The applicant and the respondent had entered into an arrangement, whereby, the subject land which was to be developed by the applicant was allowed to be leased out to the tenants of the applicant in the adjoining land and the land that was the subject matter of the Joint Venture Agreement dated 23.11.2012 was used as a parking space for the tenants of the applicant.



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7. It further appears that approximately a sum of Rs.5.58 crores has been paid either by the applicant herein or by the applicants/tenant who were allowed to utilize the space for parking vehicles of their employees and visitors.

8. According to the first respondent, the amount due as of 16.05.2014 was approximately Rs.4.41 crores which has not been paid till date. The fact also revealed that the first respondent thereafter settled the property in favour of the second respondent on 17.06.2022 which has been registered as Document No.1354 of 2023 and that the second respondent in turn has now executed a Power of Attorney in favour of the third respondent on 06.04.2023 vide Document No.4465 of 2023 for sale of the property.

9. Meanwhile, it appears the applicant has filed private complaint against the first and second respondents for interfering with the peaceful possession. The applicant has also filed a suit against the first



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respondent in O.S.No.415 of 2022 before the Principal District Court, Chengalpet for a declaration and for a permanent injunction and for other incidental relief in respect of the very same property.

10. Since the applicant has not secured any interim order, the applicant has now approached this Court by way of an application under Section 9 of the Arbitration and Conciliation Act, 1996. The applicant in turn has also issued a legal notice on 02.06.2023, purportedly, under Section 21 of the Arbitration and Conciliation Act, 1996, wherein, the applicant has asked the first respondent to consent for appointment of Mr.Justice D.MURUGESAN, Former Chief Justice, Delhi High Court as the sole Arbitrator to resolve the dispute between the parties.

11. The case of the respondent is that the Joint Venture Agreement dated 23.11.2012 was a non-est agreement from the beginning as the said agreement was to come into force only after the applicant obtains approval from the concerned authorities.



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12. It is submitted that Clause 46 of the Joint Venture Agreement dated 23.11.2012 is categorical, as per which in the event of failure of the applicant in obtaining planning approval by the concerned authorities, both the parties shall revert back to their original position as if no Joint Venture agreement was signed between the parties.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

14. The applicant may have been entitled to invoke the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996 as an interim measure. However, the applicant has invoked the jurisdiction of the Principal District Court, Chengalpet in O.S.No.415 of 2022. Having invoked the jurisdiction of the Principal District Court, Chengalpet in O.S.No.415 of 2022, the applicant cannot seek relief under Section 9 of the Arbitration and Conciliation Act, 1996.



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15. Whether the applicant is entitled for other relief by way of damages or whether the first respondent is entitled for any counter claim cannot be decided in an arbitral proceedings by referring to Arbitration Clause 38 in Joint Venture Agreement dated 23.11.2012, as the applicant has invoked the jurisdiction of the Civil Court in O.S.No.415 of 2022 before the Principal District Court, Chengalpet. Question of this Court entertaining an application under Section 9 cannot be countenanced.

16. Considering the above, Court is not inclined to entertain this application. Accordingly, this application stands dismissed. Liberty is given to the parties to work out the rights and remedy in the suit that has been insist before the Principal District Court, Chengalpet in O.S.No.415 of 2022.



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WEB COPY 17. With the above liberty, this application stands dismissed.

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