

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

COMMERCIAL COURT APPEAL No. 25 OF 2022

Date: 31.01.2023

Between:

M/s Y S K Infra Properties Ltd
Previously known as Viswa Properties India Ltd Rep by its
Director Mr Y V Suresh S/o Mr Y Koteswar Rao Age 52 years
Occ Business R/o Plot No 187 BNR Hills Raidurga Near Plot No
51 Jubilee Hills Hyderabad.

.....Appellant

And

Smt Hemalatha
W/o Sri MADhusudhana Rao Aged about 63 years Occ
Housewife R/o Flat No 502 Sri Kasava Residency Valium
Kasavarao Street Patamata Lanka Vijayawada AP Rep by her
GPA holder No 2 and 3 and others.

.....Respondents

The Court made the following:

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ORAL ORDER : *(Per Hon'ble Sri Justice P.Naveen Rao)*

Heard Sri Vedula Srinivas, learned senior counsel for appellant, and Sri B.Satish Kumar, learned counsel for respondents.

2. The appellant herein is the petitioner in C.O.P.No.18 of 2021 in the Court of the Special Judge for Trial and Disposal of Commercial Disputes, Rangareddy District, at L.B.Nagar. The appellant entered into a development agreement with respondent No.1 to develop the land to an extent of 1342 square yards, at Rayadurga Nav Khalsa Village, Serilingampally Mandal, Rangareddy District. It appears that differences arose between the appellant and respondent No.1 – owner, of the property. In accordance with the clause containing the resolution of dispute by Arbitration, the appellant filed Section 9 application in C.O.P.No.18 of 2021 praying to grant interlocutory protection, pending commencement of the arbitral proceedings. The Court below by order dated 29.07.2022

declined to grant the interlocutory protection sought by the appellant. Challenging the same, this appeal is filed.

3. Having found the *prima facie* case in favour of the appellant, this Court by order dated 12.09.2022 made in I.A.No.1 of 2022 passed the following order:

“Having considered the matter, we are of the opinion that *prima facie*, balance of convenience is in favor of the appellant to the extent of restraining the respondent Nos.1, 2 and 3 from alienating or creating third party interest in respect of petition A schedule property - land portion of flat of built-up area i.e.,1025 Sq.Feet in 4th Floor of Devi Court Yard and accordingly, injunction is granted to that extent”.

4. Respondent Nos. 1, 3 to 5 filed an application to vacate the said interim order.

5. When the matter is taken up, learned senior counsel for appellant, informs the Court that Arbitration Application No.83 of 2022 was filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short ‘Act, 1996’) to appoint an Arbitrator to resolve the *inter se* dispute and by order dated 10.01.2023 this Court appointed an Arbitrator to resolve the issue. He further submits that the interlocutory protection granted in favour of the appellant may be continued pending finalization of the arbitral proceedings.

6. Learned counsel appearing for respondent Nos.1, 3 to 5 opposed for continuation of the interim order dated 12.09.2022 on the ground that under the guise of the interim order, the third party to the dispute in whose favour the appellant has sold the apartment, could undertake interior work and if such interior work is undertaken, grave prejudice would be caused to respondent Nos.1, 3 to 5.

7. We appreciate the said contention of learned counsel for respondents. Having regard to the order passed by this Court, we are of the opinion that merely because the appellant has sold the subject apartment and purchaser is undertaking interior work, the same cannot take away the right of respondent Nos.1, 3 to 5 to secure possession of said apartment if they succeed before the Arbitral Tribunal. The alleged alienation by appellant and undertaking of interior work is subject to the result of the arbitral proceeding. Neither the appellant, nor his purchaser can claim equities, merely because this Court has passed an interim order.

8. Having regard to the facts noted above, the purchaser is allowed to undertake interior development work. Accordingly, the Commercial Court Appeal is disposed of. We also request

the Hon'ble Arbitrator to expedite the arbitral proceedings and conclude the same as expeditiously as possible.

Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

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