

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Neutral Citation No. 2023:PHHC:090300-DB

FAO-CARB-35-2022 (O&M)

Decided on: 18.07.2023

Estate Officer-II, Haryana Shehri Vikas Pradhikaran

.....Appellant

Versus

Sanjivani Lifecare Medical Centre Pvt. Ltd.

.....Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Ms.Vasundhra Asija, Advocate, for
Mr.P.S.Chauhan, Advocate, for the appellant.

Mr.Gagandeep Singh, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral) :-

1. The present appeal is directed against the order of the Commercial Court, Gurugram dated 16.03.2022 wherein the application filed under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, the 'Act') by the respondent-applicant therein had been allowed. The Commercial Court had noticed that the applicant had been able to satisfy all the three ingredients for the grant of the said relief as a prima facie case had been made out and balance of convenience was also in favour of the applicant who would suffer irreparable loss if the said relief was denied. Resultantly, protection was granted to the said applicant till the culmination of the Arbitration proceedings and parties were directed to maintain status quo qua the plot in question in all respects.

2. Counsel for the respondent has brought to our notice that in Arbitration case No.149 of 2022, filed by the respondent-hospital, the allottee, Dr.Justice B.B.Parsoon, Former Judge of this Court has been

appointed as sole Arbitrator vide order dated 17.03.2023.

3. A perusal of the said order would go on to show that there was a conveyance deed dated 09.01.2007 and Clause 12 of the general terms and conditions provided for pre-arbitral settlement mechanism and for dispute resolution through arbitration. Notice having been served under section 21 of the Act, the jurisdiction under Section 11 had been invoked. The defence before the learned Single Judge who appointed the Arbitrator was that a fraud had been played and there was transfer of shares and the Arbitrator should not be appointed. Learned Single Judge came to the conclusion that the said matter has to be decided by the Arbitrator itself.

4. A perusal of the impugned order would go on to show that the dispute pertains to allotment of hospital site at Sector 55-56, Gurugram against total sale price of Rs.71,65,620/- at that point of time. There was a dispute regarding the possession apparently and regarding the interest and the enhancement charges which were being claimed since the conveyance deed dated 09.01.2007 was also executed by the appellant which was duly registered on 10.01.2007 in which there was a provision for arbitration as per Clause 12. It was also noticed by the Commercial Court, Gurugram that the dispute is regarding the construction, whether it was done in time and the orders passed inter se the authority and also the fact that a show cause notice dated 26.11.2021 was issued under Section 17(3) of the Haryana Shehri Vikas Pradhikaran Act, 1977. Apparently there has been dispute regarding possession and re-possession and delay being the subject matter of the arbitration proceedings. A speaking order dated 24.11.2021 had also been passed rejecting the date of offer of possession. A finding had been recorded that in November, 2019, the matter was pending regarding the sanction and approval of the building

plan. Apparently, the communication whereby the sanction/approval of the building had been done at the level of HUDA had not been received.

5. A perusal of Section 17(3) would go on to show that where there is a breach of any condition, there can be an order of resumption and in such circumstances, the applicant had approached for the arbitration proceedings which were part and parcel of the conveyance deed. Section 9 of the Act provides that parties may, before or during arbitral proceedings or any time after the making of the arbitral award, apply for interim measure of protection and the Court shall have the power for interim measure of protection that would be just and convenient.

6. Keeping in view the above, we are of the considered opinion that the grant of relief under Section 9 of the Act does not suffer from any infirmity as the matter would have to be decided by the Retired Judge of this Court. The parties would obviously be bound by the terms of the same inter se and in such circumstances, no case is made out for dispossession from the property in question and if the same is allotted to someone else, the same would lead to irreparable loss and would adversely affect the interest of the allottee.

7. In such circumstances, we do not feel that that there is any reasonable ground to interfere in the impugned order dated 16.03.2022. Resultantly, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

18.07.2023 **(HARPREET KAUR JEEWAN)**
Sailesh **JUDGE**

Whether speaking/reasoned	Yes	
Whether Reportable :		No