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

Judgment pronounced on: 10.07.2023

+ ARB. A. (COMM.) 43/2022 & I.A. Nos. 10764/2022, 10765/2022

GLS FOILS PRODUCTS PVT. LTD. Appellant

Through: Mr. Divyot Singh with Ms. Avsi Malik, Advs.

versus

FWS TURNIT LOGISTIC PARK LLP & ORS. Respondents

Through: Mr. Chetan Sharma, ASG with Mr.R. V. Prabhat, Mr. Vinay Yadav, Mr.Amit Gupta and Mr. Vikramaditya Singh, Advs. for R-1. Mr. Kshitij Maheshwari and Mr. Divyank Yadav, Advs. for R-2 to 8.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present petition under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (the "Act") has been filed assailing the order dated 09.06.2022, passed by the learned arbitrator on an application under Section 17 of the Act, filed by the respondent no.1.

FACTUAL BACKGROUND

2. The disputes between the parties have arisen in the context of a Joint Venture Agreement ("JVA") dated 30.08.2019, between the respondent no.1



(claimant before the Arbitral Tribunal) and the respondent nos.2 to 8 herein, to develop a warehousing project on a property i.e.(i) Khewat No. 139 Rect. No. 25 Killa No. 21(8-0), 22(8-0), 23(8-0), 24/1 (5-16) and Rect. No. 26 Killa No. 2/111 (2-3), 9/2/2(2-8) and Rect. No. 31 Killa No. 3(8-0), 4(8-0), 5/1 (2-4) ad-measuring 6 Acre 4 Kanal 11 Marla situated in the revenue estate of Village Nangalia, Tehsil Palhawas, District Rewari, Haryana and (ii) Khewat No. 140 Min Khatauni No. 149 Min Rect. No. 25 Killa No. 16(8-0), 17(8-0), 18(7-18), 19(7-16), 20(8-0), 24/2(2-4), 25(8-0) and Rect. No. 25 Killa No. 26/1(0-6) and Rect. No. 26 Killa No. 2/112(1-19), 9/2/1(2-4) admeasuring 54 Kanal 7 Marla total Field 10, total admeasuring 54 Kanal 7 Marla or 6 Acre 6 Kanal and 7 Marla.

3. It is the case of the respondent no.1/claimant that as per the Joint Venture Agreement, the respondent nos.2 to 8 were to transfer the aforesaid property to an LLP to be incorporated for development of the project.

4. It has been averred in the statement of claim, filed before the Arbitral Tribunal, that the respondent no.1/claimant incorporated a new LLP entity under the name and style of “SY Logistics Park LLP, for the purpose of transferring the concerned property for the development of the warehousing project on the terms agreed in the alleged JVA.

5. As per the aforesaid Joint Venture Agreement, the claimant firm was to transfer to respondent nos.2 to 8 a sum of Rs.10 Lacs per acre. The area of the property in question was to the extent of 27.3265 acres.

6. Pursuant to the Joint Venture Agreement, a part consideration of Rs.1,50,000/- was paid to each of the respondent nos.2 to 8. As such, the respondent no.1/claimant is stated to have paid a total of Rs.10,50,000/- to the respondent nos.2 to 8 at the time of execution of the Joint Venture



Agreement.

7. The Joint Venture Agreement contemplated profit sharing between the respondent no.1 and the respondent nos.2 to 8 after development of the warehousing project. It was further contemplated that the sale deeds in favour of the newly incorporated LLP i.e. SY Logistics Park LLP would be executed by 31.12.2019.

8. Disputes arose between the parties on account of alleged failure on the part of the respondent nos.2 to 8 to execute the sale deeds, as contemplated in the Joint Venture Agreement.

9. Consequently, disputes have arisen between the parties, the respondent no.1 invoked the Arbitration Clause contained in the Joint Venture Agreement and issued a notice invoking arbitration on 04.02.2020. Subsequently, a petition under Section 11 of the Arbitration and Conciliation Act came to be filed on 07.03.2020.

10. After the notice of invocation of arbitration was issued by the respondent no.1, the land in question/property in question was sold to the appellant herein, vide sale deeds dated 19.08.2020 and 11.06.2020.

11. The respondent no.1/claimant also filed a petition under Section 9 of the Act on 17.12.2021 seeking certain interim measures of protection. Vide order dated 20.12.2021, this Court disposed of the aforesaid petition filed under Section 11 of the Arbitration and Conciliation Act, and appointed a Sole Arbitrator to adjudicate the disputes between the parties. In the Section 9 proceedings, this court, vide order dated 21.12.2021 directed the respondent no.1/claimant to approach the learned Sole Arbitrator for appropriate relief under Section 17 of the Act.

12. In the above background, an application under Section 17 of the Act



was filed by the respondent no.1 before the learned Sole Arbitrator seeking the following prayers:

“5. RELIEF OR THE REMEDY SOUGHT

5.1 In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(A) Issue ad interim ex-parte orders/direction for preserving and protection of the subject matter of arbitration i.e. Disputed Property, by ordering status quo on title and possession and complete cessation of any act acts by which the character of property undergoes a change including stoppage of ongoing/projected construction so that no further third-party rights/equities are created on the Disputed Property.

(B) Direct and Restrain the Respondents from making any construction on the Disputed Property and not to in any manner engage in any kind of commercial activity on the subject/Disputed Property or advertise /communicate/display bill-boards with third parties as regards the marketability of the same, as these may lead to creation of further third party rights, interest and equities, which shall have a direct bearing on the rights of the Applicant/Claimant; and

(C) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

13. The relief sought by the respondent no.1/claimant in the statement of claims, filed before the learned Sole Arbitrator is as under:

“In view of the foregoing, the Claimant respectfully prays that the Hon'ble Arbitral Tribunal may be graciously pleased to:

A. Pass an Award directing specific performance of the Joint Venture Agreement dated 30.08.2019, and directing the Respondents to execute their respective Sale Deeds qua the Disputed Property in favour of the joint venture entity that would be set up in terms of the Joint Venture Agreement dated 30.08.2019;

OR IN THE ALTERNATIVE

B. Direct the Respondents to jointly and/or severally pay the Claimant a total sum of Rs.14.14 Crore as loss of profit in terms of Claim 2, along with pas and pendente lite interest, calculated at 18% simple interest per annum, from 01.01.2020 till the date of Award;

C. Direct the Respondents to jointly and/or severally pay the



Claimant a total sum of Rs.15,50,000/- (Rupees Fifteen Lakh Fifty Thousand Only) as Refund of initial deposit in terms of Claim-3, along with past and pendente lite interest, calculated at 18% simple interest per annum, from the date of each payment till the date of Award;

- D. Direct the Respondent to jointly and/or severally pay the Claimant a total sum of Rs.8.94 Crore as increased price of land in terms of Claim 4, alongwith past and pendente lite interest, calculated at 18% simple interest per annum, from 01.01.2020 till the date of Award;*
- E. Direct the Respondents to jointly and/or severally pay the claimant future interest on the awarded amount at 18% simple interest per annum, calculated from the date of Award till the date of realization.”*

14. The Section 17 application came to be disposed of vide the impugned order dated 09.06.2022 wherein the learned Sole Arbitrator has *inter-alia*, held as under:

“86. In the aforesaid circumstances, the Respondents No. 1 to 7 and Respondent No.8 are hereby directed to maintain status quo in respect of the title and possession of the land in question and ensure complete cessation of any act/acts by which the character of the property undergoes a change, including any further construction either by the Respondent No. 8 or by the Respondents No. 1 to 7 so that no further third-party rights/equities are created qua the Disputed Property. Since commercial activity has yet to be started by the Respondent No. 8, it is made clear that in case the Respondent No.8 chooses to carry on factory operations or other commercial activity on the 3 acres (approx.) of land constructed by it on the Disputed Property, it will not be open to the Respondent No 8 to claim any special equities by reason thereof.

87. Resultantly, application under Section 17 of the Act filed by the Claimant is allowed in the above terms.

88. It is clarified that all observations made in this order are prima facie and shall not operate to the prejudice of any of the parties at any subsequent stage of the proceedings. All rights, objections and pleas of the parties are left open to be decided after the trial of the case.”

SUBMISSIONS ON BEHALF OF APPELLANT

15. Learned counsel for the appellant has strenuously contended that the impugned order results in grave hardship to the appellant and is required to



be vacated forthwith. It has been emphasized by learned counsel for the appellant that the appellant is a bonafide purchaser with consideration and has invested a huge amount in carrying out development/construction on the property in question. It is further contended that the appellant has availed a loan facility of Rs.80 Crores from Punjab National Bank and only after taking necessary approvals and permissions from the concerned authorities did it proceed to carry out the construction work for the purpose of setting up of a factory on the property in question. The possession of the property in question is stated to be with the appellant.

16. It is further contended that the respondent no.1 belatedly invoked the arbitration clause as incorporated in the Joint Venture Agreement dated 30.08.2009. However, even after filing the petition under Section 11 of the Act on 07.03.2020, no steps were taken by the respondent no.1 to effect service on the respondent nos.2 to 8. It is contended that the sale deeds in favour of the appellant were executed on 19.03.2020 and 11.06.2020, i.e. prior to the service being affected of the Section 11 petition on the respondent nos.2 to 8. It is stated that the part consideration, alleged to have been paid by the respondent no.1 is miniscule, as compared to the consideration paid by the appellant and the investment undertaken by the appellant.

17. It has been emphasized that the petition under Section 9 of the Act was filed by the respondent no.1 almost after two years from 31.12.2019 i.e. the date set out in the Joint Venture Agreement for transfer of the property to the newly incorporated LLP.

18. It is contended that the respondent no.1 did not even incorporate the LLP in a timely manner and as such the very purpose of the Joint Venture



Agreement stood defeated in the absence of an incorporated LLP with the participation of the respondent nos.2 to 8.

19. It is a case of learned counsel for the appellant that:

- i. The respondent no.1 has miserably failed to make out a *prima facie* case for grant of an injunction;
- ii. The respondent no.1 was not entitled to any injunctive relief in view of delay and laches; and
- iii. Interim orders could not have been passed against the appellant, since the appellant was not even a party to the Joint Venture Agreement on the basis of which rights are sought to be asserted by the respondent no.1.

20. In addition, it is contended that the Joint Venture Agreement is not capable of specific performance at all since it is in the nature of an agreement to enter into a partnership. It is submitted that the legal position is settled that such an agreement can never be specifically be enforced. In this regard, reliance has been placed on the following authorities :

- i. ***Gopal L Raheja and Another v. Vijay B. Raheja and Others;*¹**
- ii. ***'The Treatise on the Specific Performance of Contract'*²;**
- iii. ***'American Jurisprudence'*³;**
- iv. ***Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. &Ors;*⁴**
- v. ***North-Eastern Handloom and Handicraft v. Sports Station India Pvt. Ltd.*⁵ and**
- vi. ***Indian Rly. Catering and Tourism Corporation Ltd. And Ors. V.***

¹2007 SCC OnLineBom 399

²Rt Hon Sir Edward Fry, 6th Edition, First Indian Reprint, 1997

³2nd Edition, Vol 46, 1994

⁴(2008) 10 SCC 345

⁵MANU/DE/8181/2007



Cox and Kings Ltd.⁶

21. Alternatively, it has been contended that the Joint Venture Agreement is in the nature of an agreement to enter into a further agreement and even on that count there can be no specific performance. In this regard reliance has been placed on the following judgments:

- i. ***Dresser Rand SA v. BindalAgroChern Ltd;*⁷**
- ii. ***Speech Software Technologies (India) Pvt. Ltd. V. Neos Interactive Ltd.;*⁸ and**
- iii. ***Devinder Kumar Sharma v. Mohinder Singh.*⁹**

22. Finally, it is contended that the balance of convenience is in favour of vacating of the impugned order, passed by the learned Sole Arbitrator and to allow the appellant to have unhindered rights in respect of the land in question without any inference by the respondent no.1.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

23. On the contrary, learned counsel for the respondent no.1 has contended that the respondent nos.2 to 8 colluded with the appellant for the purpose of creating third party rights in the subject matter of arbitration after commencement of arbitration on 04.02.2020 (the date on which the notice of invocation of arbitration was issued by the respondent no.1).

24. It has been strenuously contended that the appellant is not a bonafide purchaser since the appellant bought the land with full knowledge of the aforesaid prior background and the Joint Venture Agreement dated 30.08.2019. It is contended that the relief of specific performance as sought

⁶MANU/DE/0033/2012

⁷(2006) 1 SCC 751

⁸(2009) 1 SCC 475

⁹2012 SCC OnLine Del 4442



by the respondent no.1 in the arbitration proceedings will be rendered infructuous if protective and injunctive orders are not passed qua the property in question.

25. It has been emphasized that the order passed by the learned Sole Arbitrator is a well-reasoned order taking into account all aspects of the matter and the contentions raised by the appellant and there is no warrant to interfere with the same especially since the arbitration proceedings are stated to be at an advanced stage. It is contended that the respondent no.1/claimant have made out a strong prima facie case before the learned Sole Arbitrator; the balance convenience is also in favour of the respondent no.1.

26. Elaborate reliance has been placed on the findings of the Arbitral Tribunal as recorded at paragraphs 74 - 80 and 85 of the impugned order dated 09.06.2022.

27. It has been emphasized that the legal position, as laid down in a series of judgments is to the effect that the scope of interference with an interim measure of protection issued under Section 17 of the Act, is minimal while entertaining an appeal under Section 37(2)(b) of the Act. In this regard reliance has been placed on the following judgments:

- i. ***L&T Finance vs. DM South India Hospital Pvt. Ltd.***;¹⁰
- ii. ***Dinesh Gupta &Ors vs. Anand Gupta &Ors.***;¹¹
- iii. ***Sanjay Arora &Ors. Vs. Rajan Chadha &Ors.***;¹² and
- iv. ***World Window Infrastructure Pvt. Ltd. Vs. Central Warehousing Corporation.***¹³

¹⁰2021 SCC OnLine Del 5571

¹¹MANU/DE/1727/2020

¹²MANU/DE/2643/2021

¹³MANU/DE/3207/2021



28. It has been emphasized that there is no impediment to specific performance in the present case and the necessary evidence in this regard is being adduced before the learned Sole Arbitrator. In the circumstances, it is contended that there is no occasion or justification whatsoever to interfere with the impugned order dated 09.06.2022.

Submissions on behalf of Respondent nos.2 to 8

29. Notably, the respondent nos.2 to 8 have not filed any appeal against the order dated 09.06.2022. However, in the written submissions filed on behalf of respondent nos.2 to 8, the said respondents have supported the plea raised by the appellant and have contended as under:

- i. the Joint Venture Agreement is incapable of specific performance;
- ii. the balance of convenience was against grant of interim relief; and
- iii. the impugned order does not properly appreciate the legal and factual position, while granting the interim order in favour of the respondent no.1.

ANALYSIS AND CONCLUSION

30. A perusal of the impugned order dated 09.06.2022, reveals that the learned Sole Arbitrator has considered the matter in minute detail and dealt with the contentions raised by the appellant herein. As regards the contention of the appellant, regarding the delay on the part of the respondent no.1/claimant in invoking the arbitration and/or filing the petition under Section 9 of the Act, it has been held in the impugned order as under:

“74. There was no delay by the Claimant as alleged by the Respondents in filing the application under Section 9 of the Act. The record shows that the Claimant in terms of the Dispute Resolution Clause (Clause 12.7) sent a Consultation Notice on 02.01.2020 to Respondents No. 1 to 7 to amicably resolve the dispute. The Respondents No.1 to 7 replied vide letter dated 10.01.2020 and refused to settle the dispute amicably. Thereafter, on completion of stipulated period of 30 days, on 04.02.2020, the Claimant



invoked the arbitration clause and sent Invocation Notice to Respondents No. 1 to 7 for appointing/nominating its arbitrator. The Respondents No. 1 to 7 admittedly received the notice on 10.02.2020, but chose not to reply to the same. The Claimant was thus constrained to file Petition under Section 11 of Arbitration and Conciliation Act, 1996 for appointment of arbitrator on 07.03.2020 before the Hon'ble Delhi High Court. Subsequent to the invocation notice / commencement of arbitration proceedings on 04.02.2020 and even subsequent to the filing of Section 11 Petition by the Claimant on 07.03.2020, the Respondents No. 1 to 7 sold part of the Disputed Property to the Respondent No.8 vide two separate Sale Deeds dated 19.03.2020 and 11.06.2020, respectively. The said sale was made during the pendency of the litigation between the parties before the Hon'ble Delhi High Court and after the High Court had issued notice on the Section 11 Petition to the Respondents No. 1 to 7 on 11.03.2020. However, since the Covid restrictions kicked in and on account of non-functioning of the Registry, orders could not be uploaded, and the process could not be served. Till July 2021, the Claimant asserts, and I am inclined to agree with the Claimant on this, that it was unprecedented times, when it was impracticable to expect the Claimant to know that the title in the lands had changed hands and /or construction was being carried on, more so as the subject property is far away from the main road and is stated to be not visible for about 6 kilometres therefrom. The Claimant has asserted that till date it does not know the extent of the construction carried out at the site and it was only when in November, 2021, the Respondent no. 8 put its signage board, that the Claimant got apprehensive that behind its back some third-party rights were being created. Immediately, the Claimant moved its Section 9 Application on 17.12.2021, which got listed on 21.12.2021.

75. The aforesaid assertions of the Claimant prima facie appear to be correct and, in any event, it is difficult without evidence to the contrary to impute knowledge to the Claimant of the transfer of the land in question and of the construction activity thereon."

31. There appears no infirmity in the aforesaid conclusion by the learned Sole Arbitrator.
32. The learned Sole Arbitrator has rightly taken note of the fact that the sale deeds were executed in favour of the appellant by the respondent nos.2 to 8 after the notice invoking arbitration was issued by the respondent no.1 on 10.02.2020, which is the date on which arbitral proceedings have



commenced in terms of Section 21 of the Act

33. The learned Sole Arbitrator has rightly taken note of the fact that the transfer in favour of the appellant was *prima facie*, a product of collusion between the respondent nos.2 to 8 and the appellant. In this regard reference may be made to the following observations in the impugned order passed by the learned Sole Arbitrator:

“76. The Respondents No. 1 to 7 also appear to be parties in collusion with the Respondent No. 8 in suppressing material facts from the Court. Reply to Section 11 Petition was admittedly filed by the Respondents No.1 to 7 on 03.11.2021 (after one and half years of filing of petition), but there was not a whisper in the said reply about the creation of any third-party rights in the Disputed Property. It was only when the Claimant filed its Section 9 Petition (which was later converted to Section 17 Petition before this Tribunal) that the Respondents revealed that they had created third-party rights in the said Disputed Property subsequent to the filing of Section 11 petition by the Claimant. No justification is forthcoming on the record as to why Respondents No. 1 to 8 concealed and hid this material fact from the Hon'ble High Court. Instead, the Respondents No. 1 to 7 took the plea in the Section 11 Petition that the Claimant was not the party with whom they had entered into a JVA on 30.08.2020 (which plea was rightly brushed aside by the Hon'ble High Court in its order dated 20.12.2021).”

34. With regard to the contention that the Joint Venture Agreement dated 30.08.2019 is determinable and that interim relief would fall foul of Section 14 (b) and (d) of the Specific Relief Act, 1963 it has been held in the impugned order as under:

“77. As regards the contention of the Respondents that the agreement is determinable and can be terminated, I do not find any merit in the same for the reason that the agreement has not been terminated till date by the Respondents No. 1 to 7. Had it been determinable, it stands to reason that the Respondents No.1 to 7 would have terminated the same and refunded the amount paid by the Claimant to them towards purchase of land. The Agreement is a subsisting one and the judgments cited on behalf of the Respondents that where there is no subsisting contract between the parties and the agreement is determinable in nature, interim relief cannot be granted to the Claimant, are, therefore, inapplicable. The entire tone and tenor of the Agreement, prima facie appears to suggest that it was neither



determinable nor could be terminated and, in any event, the same has not been terminated till date.

78. The argument of the Respondents that interim relief cannot be granted in view of the fact that JVA is hit by Section 14(b) and (d) of the Specific Relief Act read with Section 41 (h) of the said Act also appears to me to be based on a mis-construction of the Recitals and Clauses of the Agreement. The terms of the Agreement appear to me to be clear and precise, which do not require monitoring from this Tribunal. Much stress has been laid by Mr. Sethi on his argument that the terms of JVA are not specific and incapable of being enforced but upon close reading of the JVA, it is more than apparent that there is no non-certainty or ambiguity in the terms of the Agreement. The fulcrum of the Agreement is the transfer of land from the first party to the second party for the purpose of development of the land by raising construction of a warehouse thereon. Formation of LLP by itself does not appear to be the bargain, but only a device for transfer of the land from the Respondents No. 1 to 7 to the Claimant. For the execution of the project on the transferred land, detailed steps have been outlined and the responsibility of the entire construction is vested in the Claimant, the Respondents No. 1 to 7 having no role to play. The bargain of the parties is set out in clear terms and the said bargain constitutes transfer of land from the first party to the second party, the development of the land into are house facilities by the second party at its own costs and expenses and upon completion of construction of the warehouse, the rents to be shared on the constructed warehouse between the first party and the second party in the ratio of 30:70. The formation of the LLP appears to be merely with a view to facilitate the whole transaction, and could aptly be said to be a module for carrying out the bargain of the parties.”

35. In para-82 of the impugned order, learned Sole Arbitrator has also taken note of the amendment of Section 10 of the Specific Reliefs Act (by Act 18 of 2018), as a result of which the grant of relief for specific performance is no longer discretionary. Reference in this regard is rightly made to the decision of the Supreme Court in the case titled as **B. Santoshamma v. D. Sarala**,¹⁴ wherein it has been held as under:

“ 68. Section 10 of the SRA as it stood prior to its amendment with effect from 1-10-2018 provided:

“10. Cases in which specific performance of contract

¹⁴ (2020) 19 SCC 80



enforceable.—Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases—

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.”

69. After amendment with effect from 1-10-2018, Section 10 of the SRA provides:

“10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.”

70. After the amendment of Section 10 of the SRA, the words “specific performance of any contract may, in the discretion of the court, be enforced” have been substituted with the words “specific performance of a contract shall be enforced subject to ...”. The court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the SRA. Relief of specific performance of a contract is no longer discretionary, after the amendment.

71. An agreement to sell immovable property, generally creates a right in personam in favour of the vendee. The vendee acquires a legitimate right to enforce specific performance of the agreement.”

36. It is also pertinent to note that in the statement of claim filed on behalf of respondent no.1/claimant before the learned Arbitrator, the respondent no.1 has primarily sought specific performance of the Joint Venture



Agreement dated 30.08.2019 and directions against the respondent nos.2 to 8 to execute their respective sale deeds qua the property, as contemplated in the Joint Venture Agreement.

37. In case the interim measure of protection, as sought in the application under Section 17 of the Act is not granted and the appellant is permitted to deal with the property in question, then the main relief sought in the statement of claim would be rendered infructuous. The contention that the appellant has invested huge amounts of money in purchasing the land/property in question from the respondent nos.2 to 8 and carrying out the construction thereon cannot defeat the prior rights of the respondent no.1.

38. This has also been rightly noticed in paras 79 and 80 of the impugned order as under:

“79. As regards the contention of Mr. Sethi that the Respondent No.8 has made massive investments, whereas the Claimant has invested a negligible sum of money and, therefore, irreparable loss will be caused to the Respondent No. 8 who has invested Crores of rupees in the construction of the Factory, Plant & Machinery etc., to my mind, the investments made by the Respondent No.8 have no bearing on the facts of the present case if the Claimant succeeds in proving that the sale of the land was made by the Respondents No. 1 to 7 to the Respondent No. 8 after the service of invocation notice upon the Respondents No. 1 to 7 and after the filing of the Petition under Section 11 of the Act, fraudulently and in collusion with each other. The Respondent No. 8 would not then be a bonafide purchaser for value within the meaning of Section 19(b) of the Specific Relief Act. In any event it is beyond cavil that Section 52 of the Transfer of Property Act overrides Section 19(b) of the Specific Relief Act. Assuming Respondent no. 8 to be a bonafide purchaser, its rights would still be subservient to the rights of the Claimant by virtue of Section 52 of Transfer of Property Act as held by the Hon'ble Supreme Court time and again. [Nivarti Govind Ingale v. Revanagouda Bhimanagouda Patil, (1997) 1 SCC 475 (Para-7), Ram Peary v. Gauri, 1977 SCC OnLineAll455: AIR 1978 All (Para-6); Guruswamy Nadar v. P. Lakshmi Ammal, (2008) 5 SCC 796 : 2008 SCC OnLine SC 759 (Para-6, 9); Ram Swarup Singh v. Malabar Mahton, 1959 SCC OnLine Pat 48: AIR 1960 Pat 235 (Para-4, 14). No law to the contrary has been cited by the Respondents.



80. Also, as regards the massive investments made by the Respondent No., 8 in the setting up of its factory for production of aluminium foils, it is the admitted case of Respondent No.8 and is clearly set out in the Statement of Defence that a major part of the construction has been done by the Respondent No. 8 on the lands purchased from other land owners and "only a small portion of construction has been done on the lands in dispute " (Para 9 of the Statement of Defence). On a specific query put by this Tribunal to Mr. Sethi in this regard, Mr. Sethi submitted on instructions, that out of the total Disputed Land measuring 13 acres, 2 canals and 18 marlas purchased by the Respondent No. 8 from Respondents No. 1 to 7, construction had been made only on land measuring approximately 3 acres, which is covered by the JV A and the remaining construction of the factory is on the land purchased from other land owners by the Respondent No. 8. To be noted that the JVA covers land measuring 27.3265 acres and the balance land is in the possession of Respondents No. 1 to 7. Thus, even assuming that some construction has been made on 3 acres of land out of the total land measuring 27.3265 acres, it is not open to the Respondent No. 8 to contend that it had made investments in crores of rupees on the Disputed Property, whereas the Claimant has invested a negligible amount of money nor it is open to it to claim any special equities in this regard."

39. After considering the entire gamut of circumstances, the impugned order does directs the appellant and the respondent nos.2 to 8 to maintain status quo in respect of title and possession of the land in question and refrain from changing the character of the property so that no further third party right/equity are created in respect thereof. No fault whatsoever can be found with these directions.

40. Further, the impugned order directs that if the appellant chooses to carry on factory operations or other commercial activity on the three acres of land comprising of the property in question, it will not be open to the appellant to claim any special equity by reasons thereof.

41. The above directions passed by the learned Arbitrator are unexceptionable and there is no rationale to interfere with the same. The said directions are absolutely necessary to ensure that the claim raised by the



respondent no.1, are not rendered infructuous, in the event of the learned Sole Arbitrator holding in favour of the respondent No.1 (claimant) as regards grant of specific performance. Importantly, the learned Sole Arbitrator has clarified in the impugned order itself that all the observations made therein are *prima facie* and shall not operate to the prejudice of any of the parties at any subsequent stage of proceeding. The entire matter is still at large before the learned Sole Arbitrator. It has been informed by respective counsel, that the parties are in the process of adducing evidence before the learned Sole Arbitrator. The impugned order does not foreclose the right of any of the parties to the arbitration to place relevant material on record and/or take every contention as may be available under law before the learned Sole Arbitrator, at the time of final arguments. As such, the various legal contentions raised by the learned counsel for the appellant regarding the Joint Venture Agreement being not capable of specific performance and/or as to whether the appellant's rights, as an alleged bonafide purchaser can be interdicted or not, are all issues which are yet to be determined by the learned Sole Arbitrator.

42. At this stage, in these proceedings, it would not be appropriate to render any findings/conclusion with regard to the aforesaid issues since the learned Sole Arbitrator is seized of the same. Needless to say, the learned Sole Arbitrator shall take into account the contentions of the appellant at the stage of passing of the final award. However, in the meantime, it would be wholly inappropriate if the appellant is allowed to disrupt the status quo in respect of the property in question.

43. The law is also well settled that this court while exercising jurisdiction under Section 37 of the Act would be loathe to interfere with an



interim measure of protection granted by an Arbitral Tribunal, particularly when the order passed under Section 17 is well reasoned and based on a thorough and minute examination of the matter, as in the present case.

44. In this regard reference may be made to the observations made by this Court in ***Dinesh Gupta & Ors vs. Anand Gupta & Ors.***(supra), wherein it has been held as under:

“59. Review under Section 37 of interlocutory orders under Section 17 is not strictly appellate. Jurisdiction of courts under Section 37 (2) is even more limited and proscribed than the jurisdiction that it exercises under Section 37(2)(a) or for that matter under Section 34. The discretionary jurisdiction exercised by arbitrator merits interference only where such exercise is palpably arbitrary or unconscionable.”

45. Also in ***L&T Finance vs. DM South India Hospital Pvt. Ltd.***(supra), it has been held by this Court as under:

“25. As long as the Arbitral tribunal has weighed the two factors - i) protection of arbitral corpus and preservation of arbitral process and ii) balanced equities between the parties on consideration of prima facie case, balance of convenience and irreparable damage; the Court should not interfere with such orders. As Section 37 is not strictly like an appeal process.”

46. In ***Sanjay Arora & Ors. Vs. Rajan Chadha & Ors.***(supra), this court held as under:

“This Court has already opined, in Dinesh Gupta v. Anand Gupta MANU/DE/1727/2020 and Augmont Gold Pvt. Ltd. v. One97 Communication Ltd that the considerations guiding exercise of appellate jurisdiction under Section 37(2) (b) are, fundamentally, not really different from those which govern exercise of jurisdiction under Section 34 of the 1996 Act.”

47. In ***World Window Infrastructure Pvt. Ltd. Vs. Central Warehousing Corporation***(supra) it has been held as under:

“29. The restraints which apply on the court while examining a challenge



to a final award under Section 34 equally apply to a challenge to an interlocutory order under Section 37(ii)(b). In either case, the court has to be alive to the fact that, by its very nature, the 1996 Act frowns upon interference, by courts, with the arbitral process or decisions taken by the arbitrator. This restraint, if anything, operates more strictly at an interlocutory stage than at the final stage, as interference with interlocutory orders could interfere with the arbitral process while it is ongoing, which may frustrate, or impede, the arbitral proceedings”

48. As such, on an overall conspectus of the peculiar factual background of the present case and the legal position as enunciated in the aforesaid cases, there is no warrant to interfere with the impugned order dated 09.06.2022.

49. As noticed in the impugned order itself, the conclusions arrived at by the Arbitral Tribunal and the directions given are based on a the *prima facie* consideration of the matter; all rights, objections and pleas of the parties are left open to be finally decided by the learned Sole Arbitrator.

50. The present appeal is, accordingly, dismissed. There shall be no orders as to costs.

JULY 10, 2023/cl

SACHIN DATTA, J

न्यायमेव जयते