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O.A.Nos.392 & 442 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2024

PRONOUNCED ON : 25.10.2024

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

O.A.Nos.392 & 442 of 2024
and A.Nos.4978 & 4979 of 2024

1. G.V.Adhimoolam
2. A.Vijay Raj

... Petitioners in both
O.As.

Vs.

1. S.Asaithambi
2. Senthilkumar

... Respondents in
O.A.No.392/2024

1. S.Asaithambi
2. Kavitha
3. Mekala
4. Senthilkumar
5. Lokeshwaran
6. Lalithambikai
7. Shanmugam
8. Selvi
9. K.Makeswari
10. K.Mohan Kumar
11. Yasotha
12. Rajamani

... Respondents in
O.A.No.442/2024

Prayer in O.A.No.392 of 2024: Original Application is filed under Section 9 of the Arbitration and Conciliation Act, 1996, to grant an order of ad-interim injunction,



O.A.Nos.392 & 442 of 2024

restraining the respondents his men, servants, employees, agents, or anybody claiming under them from interfering with or dealing with or developing the properties situated at Pallipalayam Village, Kumarapalayam Taluk, Namakkal District comprised in old survey Nos.311/2, 324/1A, 324/1C1 and 324/1.

Prayer in O.A.No.442 of 2024: Original Application is filed under Section 9 of the Arbitration and Conciliation Act, 1996, to grant an order of ad-interim injunction, restraining the respondents his men, servants, employees, agents, or anybody claiming thereunder them interfering with or dealing with or developing the properties situated at Pallipalayam Village, Kumarapalayam Taluk, Namakkal District comprised in old survey Nos.311/2, 324/1A, 324/1C1 and 324/1 and new survey Nos.311/2D, 324/1A, 324/1C1 ad measuring 41,553 sq.ft.

In O.A.No.392 of 2024

For Petitioners : Mr.Avinash Wadhwani
For Respondents
For R1 : Mr.P.M.Balasubramaniam
Senior Counsel
For Mrs.K.Nirajana Devi
For R2 : Mr.S.P.S.Nithyan

In O.A.No.442 of 2024

For Petitioners : Mr.Avinash Wadhwani
For Respondents
For R1 to R3 : Mr.P.M.Balasubramaniam
Senior Counsel
For Mrs.K.Nirajana Devi
For R4 to R12 : Mr.S.P.S.Nithyan



COMMON ORDER

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These applications have been filed for ad interim injunction restraining the respondents from interfering with, dealing with or developing the property comprised in old survey Nos.311/2, 324/1A, 324/1C1 and 324/1 and new survey Nos.311/2D, 324/1A, 324/1C1 ad measuring 41,553 sq.ft., situated at Pallipalayam Village, Kumarapalayam Taluk, Namakkal District, pending disposal of re-arbitration of dispute.

2. The first applicant is the father and the second applicant is the son. They have filed these applications under Section 9 of the Arbitration and Conciliation Act, seeking ad-interim injunction, pending the disposal of re-arbitration proceedings. The applicants have engaged in multiple business. During their course of business, they have borrowed a sum of Rs.3 crores for interest at the rate of 36% per month. The entire principle amount has to be paid to the respondents within a period of six months. As a pre condition, the first respondent requested the applicants for transfer of certain properties, which are the subject mater of these applications, as security. The first respondent undertook to re-transfer those properties to the applicants upon settling the entire loan amount. The applicants had agreed to transfer the subject properties in favour of the first respondent and the said undertaking was formalized by way of an agreement dated 28.12.2017.



referred to the sole arbitrator. While pending the arbitration proceedings, the first respondent attempted to alienate the properties and as such the first applicant filed an application before this Court under Section 9 of the Arbitration and Conciliation Act, in O.A.No.133 of 2020 and sought for interim injunction. This Court by an order dated 10.07.2020, granted interim injunction and it shall continue till the conclusion of arbitration proceedings.

5. Before the arbitrator, both the applicants made a claim for the following reliefs:-

“I. To direct the Respondent to execute Sale Deed with respect to the Schedule mentioned property in favour of the 1 Claimant with respect to Item No. A and 2nd Claimant with respect to Item No.B, within a time frame as directed by this Hon'ble Tribunal.

(Or in the Alternative)

To direct the Respondent to pay a sum of Rs.6 Crores being the market value of the schedule mentioned property inclusive of Items A & B after adjusting the amounts payable by the Claimant.

(Or in the Alternative)

To permit the Respondent to sell the schedule mentioned property with a reserve price of not less than Rs.8 crores being the market value of the schedule mentioned property inclusive of Items A & B and return the proceeds of the sale after adjusting the amount of Rs. 90 Lakhs after sale of the schedule mentioned properties; and



II. To declare that the interest charged by the Respondent in the Agreement of Undertaking dated 28.12.2017 @ 36% Per annum thereon as usurious, exorbitant, unreasonable. Illegal and null and void.”

6. While pending the arbitration proceedings, the applicants and the first respondent had entered compromise and executed deed of compromise dated 21.01.2022. Accordingly, all the disputes between them were mutually settled among themselves. Therefore, the deed of compromise was recorded by the arbitrator and on the terms of the compromise deed and the arbitrator passed an award under Section 30 of the Arbitration and Conciliation Act, 1996.

7. However, the first respondent failed to fulfil the obligations as agreed in the compromise deed. As per the compromise, the first respondent agreed to execute deed of all necessary documents including statutory permission to sub-divide the lands into multiple plots and facilitating the sale of the suit property to the applicants' nominees. However, the first respondent had refused to fulfil that obligation. After compromise agreement, the first respondent had entered into an agreement for sale of a portion of the subject property with third parties identified by the applicants. However, once again the first respondent failed to fulfil the condition and failed to obtain DTCP approval, after receipt of the advance amount from the buyers.



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8. That apart, the first respondent demanded more money than the agreed amount from the purchasers identified by the applicants. Further, the first respondent breached the terms of award by executing settlement deed in favour of his family members and failed to obtain DTCP approval for the agreement holders. That apart, the first respondent had brought new buyers for sale and refused to sell the portion of the land to the agreement holders. On the strength of the settlement deed, the first respondent's daughter had executed sale deed in favour of the second respondent viz., Senthil Kumar, in respect of the property comprised in survey Nos.311/2D, 324/1A and 324/1C1, to an extent of 6000 sq.mt., by the registered sale deed dated 22.01.2024 vide document Nos.202 & 232/2024. Therefore, it is deliberately breach of terms of the compromise. Hence, the present case.

9. Heard the learned counsel appearing on either side and perused the material placed before this Court.

10. The respondents 1 to 3 filed counter and on the submission made by the learned counsel appearing for the respondents and also on perusal of the documents revealed that the applicants are trying to re-arbitrate the dispute arising between them



on 28.12.2017, in pursuant to the amicable settlement between the parties resulting in passing of consent award dated 05.02.2022, as per the compromise deed dated 21.01.2022, which was recorded by the learned Arbitrator in the consent award, the terms and conditions of the consent award as follows :-

“1. Mr.G.V.Adhimoolam, Door No.63, R.S.Road, Pallipalayam, Erode 638006.

2. Mr.A. Vijay Raj, Door No.63, R.S.Road, Pallipalayam, Erode 638006.

(Hereinafter jointly referred to as the "PARTLY OF THE FIRST PART", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include their successors and assigns) of the FIRST PART.

Mr.S.Asaithambi, S/o, Sengoda Gounder, Aged about 56 years, Door No. 101, Thiruchengode Road, Pallipalayam, Near Vikram Theatre, Erode 638006, (Hereinafter jointly referred to as the "PARTY OF THE SECOND PART", which expression shall, unless it repugnant to the context or meaning thereof, be deemed to mean and include their successors and assigns) of the SECOND PART.}]}

A. The party of the first part and the party of the second part agree that the present disputes between them shall be resolved by the sale of the schedule mentioned properties to the nominees of the party of the first part.

B. The party of the first part and the party of the second part agree that the disputes raised in the Arbitration Proceedings shall be



disposed of in terms of this deed of Compromise.

C. The party of the first party and the party of the second party agree that the execution of the agreement represents the full and final settlement of all dues and disputes between the parties.

D. This agreement may be executed simultaneously in two counterparts, both of which will be deemed original, but all of which will constitute one and the same instrument.

E. The party of the second part has agreed to execute all documents including application for statutory approvals, permissions to divide the suit schedule lands into multiple plots and facilitate the sale of the suit schedule lands into multiple plots and facilitate the sale of the suit schedule properties to the nominees of the party of the first part and to do or execute all such things incidental to the sale of the suit schedule properties.

F. The party of the first part unconditionally agrees to withdraw the Arbitral Proceedings including the operation of the injunction as against the suit schedule property.

G. Each party shall bear their own cost.

H. The deed of compromise dated 21.01.2022 shall form part of this Arbitral Award.”

12. Accordingly, the first respondent is empowered to sell and alienate the properties to the person of his choice without obtaining any prior approval from the applicants. Accordingly, the first respondent disposed of the entire subject properties



to the respondents 2 to 13 over the period of six months from January, 2024 to July 2024, by registered sale deeds. Therefore, the first respondent doesn't own any property and third party interest has been created over the entire subject properties.

13. Admittedly, the present applications have been filed after arbitrator award passed by the sole arbitrator based on the compromise deed entered into between the parties on 21.01.2022. In fact, after recording the compromise in the presence of the parties, the arbitrator had passed an award on 05.02.2022. If the applicants have any grievance, they have to file execution petition to execute award passed by the arbitrator. Instead, the applicants filed the present applications under Section 9 of the Arbitration and Conciliation Act. These applications can be maintained only when the arbitration proceeding is pending. It is relevant to extract the provisions under Section 9 of the Arbitration and Conciliation Act as follows :-

“9. Interim measures, etc., by Court.—1 [(1)]A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods



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which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

2 [(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

Thus, the Court under Section 9 of the Arbitration and Conciliation Act, can only



formulate interim measures so as to provide right before the arbitrator.

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14. In the case on hand, admittedly as per the terms and conditions of the compromise deed, the arbitrator had passed an award dated 05.02.2022. After passing an award, the applications are filed and attempted to re-arbitrate the issue which had culminated into consent award, which is impermissible under law. The consent award is binding on the parties and the same is accepted by both the parties. It cannot be challenged when it has attained finality.

15. Admittedly, it was not challenged by the either parties in the manner known to law. Therefore, the application under Section 9 of the Arbitration and Conciliation Act, for seeking interim relief does not arise. On perusal of the prayer sought for in these applications revealed that the applicants sought for injunction until re-arbitration. There is no arbitration proceeding is pending, whether re-arbitration or fresh arbitration. If at all there is any breach of the consent award, the remedy to the applicants is only to file execution petition before the Court of appropriate jurisdiction.

16. That apart, only as per the term of the compromise deed, the first respondent is entitled to sell the properties to the person of his choice without



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restriction. Accordingly, the first respondent had executed settlement deed and sale deeds. Pending application in O.A.No.392 of 2004, the first respondent had alienated the property in favour of the other respondents. Though this Court granted interim order as against the first respondent not to alienate the subject property, there is no prohibition or bar to the first respondent to sell the suit schedule property. Therefore, after execution of sale deeds in favour of the third parties by the first respondent, the subsequent application in O.A.No.442 of 2024 filed impleading the other purchasers as parties, which cannot be maintained.

17. In view of the above, both the applications are not at all maintainable under Section 9 of the Arbitration and Conciliation Act, and it is liable to be dismissed, since the applications have no merits to grant an order as prayed for. Accordingly, both the Original Applications are dismissed. Consequently, connected applications are closed. There shall be no order as to costs.

25.10.2024

Neutral citation: Yes/no

Index : Yes/No

Speaking/Non Speaking

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G.K.ILANTHIRAIYAN, J.

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COMMON ORDER IN
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