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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 8/2024 and CM APPL. 2289/2024**

RAJKUMAR JAIN & ANR. Appellants
Through: Dr Amit George, Mr Milan
Verma and Mr Aman Sharma,
Advocates along with Petitioner
no.1 in person.

versus

PRAVEEN KUMAR KAPOOR Respondent
Through: Mr Ravin Rao, Mr Jujhar Singh
and Mr Bhushan Arora,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **22.01.2024**

1. The appellants have filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') assailing an order dated 03.07.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court in OMP(I) (COMM) No. 507/2023 captioned ***Praveen Kumar Kapoor v. Raj Kumar Jain & Anr..***

2. By the impugned order, the learned Commercial Court had allowed the respondent's application for interim measures under Section 9 of the A&C Act and had restrained the appellants from selling, alienating, transferring or in any manner creating third party interest in respect of the property described as 'Third and Fourth floor of Property bearing No. A-11/5149, Harphool Singh Building, Subzi Mandi, Clock Tower, Delhi-110007'.



3. The appellants have assailed the impugned order, *inter alia*, on the ground that it was passed *ex-parte*, without affording the appellants an opportunity to contest the same.

4. Dr. George, learned counsel appearing for the appellants submits that the respondent's case was founded on a Memorandum of Understanding dated 14.07.2017 (hereafter '**the MoU**'), which was superseded by a Sale Deed executed on the same date. He also submits that the case set up by the respondent is *ex facie* untenable as it is premised on an assertion that the respondent had paid a sum of ₹50,00,000/- in cash. He submits that there is no evidence or material to substantiate the said assertion and therefore, the respondent has failed to make out any *prima facie* case. He submits that the learned Commercial Court has grossly erred in not appreciating the same.

5. We are, *prima facie*, unable to accept that the respondent is precluded from raising any claim on the basis of the MoU as the Sale Deed was also executed on the same date as it is not impossible to construe the two documents harmoniously.

6. This Court had briefly considered the contentions advanced on behalf of the appellants on 12.01.2024 and had expressed the *prima facie* view that the appeal could be disposed of by directing that the impugned order be construed as an *ad interim* order. The relevant observations made by this Court are as under:

“6. *Prima facie*, we are unable to accept that the respondent's claim that the MOU and the Sale Deed both of which are part of a similar (*sic. rect. singular*) transaction, require to be rejected. This is considering that the said documents were executed on the same date and



may not be mutually destructive. However, *prima facie*, we do find merit in the appellants' contention that they had not been afforded adequate opportunity to contest the interim order.

7. In the aforesaid circumstances, we clarify that the impugned order is an ad interim order and the appellants have the liberty to approach the Arbitral Tribunal for modification of the same as and when the Arbitral Tribunal is constituted."

7. The learned counsels for the parties state that the respondent's application under Section 11 of the A&C Act (Arb.P. 1245/2023) has since been allowed and an Arbitral Tribunal is directed to be constituted.

8. In the aforesaid view, we consider it apposite to dispose of the present appeal by clarifying that all rights and contentions of the parties are reserved to be agitated before the Arbitral Tribunal.

9. The appellants would also be at liberty to approach the Arbitral Tribunal for modification or vacation of the impugned order. If any such application is moved, the Arbitral Tribunal shall consider the same on merits, uninfluenced by any observations made by this Court.

10. The appeal is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 22, 2024
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