



\$~60

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 267/2024 & CM APPL. 67603/2024**
(Interim Relief)

MR ATUL MALIK & ORS.Appellants

Through: Mr. Rajesh Mohan Singh, Mr.
Gaurav, Mr. Prateek Mohan
Sharma, Advs.

versus

MRS ROHINI SAWHNEY & ORS.Respondents

Through: Mr. Akshay Makhija & Mr.
Imran Moulaey, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **26.11.2024**

CM APPL. 67604/2024 (Ex.)

Allowed, subject to all just exceptions.

The application is disposed of.

FAO(OS) (COMM) 267/2024 & CM APPL. 67603/2024

1. This appeal is directed against the order dated 17 September 2024 handed down by the learned Single Judge dismissing a petition purporting to be under Section 9 of the **Arbitration and Conciliation Act, 1996¹**.

2. The petitioner/appellant had moved the Court seeking to invoke its jurisdiction conferred by Section 9 praying for release in respect of a termination letter dated 05 January 2024 bringing to an end a

¹ Act

FAO(OS)(COMM) 267/2024



Memorandum of Understanding² dated 02 March 2021 and other consequential reliefs.

3. The learned Single Judge, however, has taken note of the avowed stand of the appellant itself that no arbitrable disputes could be said to exist. This becomes apparent from the recordal of submissions and where the learned Judge has noted the contention addressed on behalf of the appellant to the effect that the Agreement to Sell dated 06 October 2017 contained a stipulation that the same would be subject to the respondents confirming their title in the suit proceedings being Suit No. 212/2018. It appears to have been argued before the learned Judge that pending adjudication of that suit, the Agreement to Sell cannot be performed and consequently no arbitrable dispute can be said to exist.

4. It was thus, and more importantly for the purposes of evaluating the challenge raised in this appeal, urged that the notice issued by the respondents under Section 21 was premature. It is this stand as struck by the appellants which perhaps led to the learned Judge observing as follows:-

“10. From the above, it is evident that it is the own case of the petitioners that as of today, there is no arbitral dispute between the parties. The petitioners assert that the dispute is premature and that the cause to initiate arbitral proceedings to adjudicate the issue is yet to accrue, since the suit between the respondent and his erstwhile owner is pending. In the absence of a dispute, I fail to understand how a petition under Section 9 of the Act would be maintainable. Section 9 of the Act reads as follows:

“9. **Interim measures, etc. by Court.**—[(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

²MoU

FAO(OS)(COMM) 267/2024



(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 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 subject matter 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) 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.”

11. A bare reading of the above would show that though a prayer under Section 9 of the Act can be made even prior to the commencement of the arbitral proceedings, however, there must be a dispute which requires interim measures of protection in respect of, inter alia, the preservation of the subject matter of the Arbitration Agreement. If it is the own case of petitioners that a dispute between the parties is, as of today, premature, then the petitioner certainly cannot maintain a petition under Section 9 of the Act. A petition under Section 9 of the Act presupposes that there is an arbitration agreement in existence and a dispute has arisen between the parties in relation to such an agreement. Section 9 of the Act is intended to be only a measure of interim protection and preservation until the arbitration proceedings are initiated or during the pendency of such proceedings. Where the petitioner itself contends that there is no arbitrable dispute, it cannot maintain a petition under Section 9 of the Act.”



5. In our considered opinion, the learned Judge has correctly found that an interim measure would be liable to be granted before or during the commencement of arbitral proceedings for the purposes of preservation of goods or the subject matter of the arbitration agreement, securing an amount in dispute or for the framing of a measure of protection. However, the invocation of Section 9 would itself contemplate a dispute having arisen between parties and which would be conceded to be the subject of an arbitration agreement and thus arbitrable. An interim measure cannot be claimed where the party so seeking that measure of protection contends that the dispute is not arbitrable. We fail to comprehend how Section 9 could have been invoked by a party which questions the very arbitrability of the dispute.

6. In light of the conceded stand which was taken before the learned Judge, the Court was well justified in refusing to wield its powers conferred by Section 9 of the Act.

7. The order in our considered opinion suffers from no error. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024/RW