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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 971/2018 & CM APPL. 54495/2018, CM APPL.**
2819/2024, CM APPL. 3854/2024

DINESH CHHABRA

..... Petitioner

Through: Mr. Ravi Sikri, Sr. Adv. with Mr.
Deepank Yadav, Mr. Abhishek
Chhabra, & Ms. Kanak Grover, Advs.
M: 9654234869

versus

M/S SHOWMAN CONSTRUCTION & IMPEX PVT. LTD.
& ORS.

..... Respondents

Through: Mr. Arun Batts, Mr. Abdul and Ms.
Ranjana Ahuja, Advs. for R-1 and 2.
M: 9810064103
Mr. Bharat Sharma, Adv. with Mr.
Shyam Lal, Adv. for R-3 and 4.

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Date of Decision: 22nd January, 2024

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present contempt petition has been filed claiming willful disobedience of the orders dated 12th March, 2007 and 03rd April, 2007 passed in Civil Suit being *CS(OS) No. 1685/2006*.
2. The aforesaid suit had been filed by respondent no. 1 herein seeking specific performance of a Collaboration Agreement dated 27th June 2005 which was executed between the parties for construction of the property



bearing no. E-32, Greater Kailash Part-I, New Delhi-110048.

3. During the pendency of the aforesaid suit, by order dated 12th March, 2007, this court had passed the order that till the next date, the parties are directed to maintain the *status quo* with respect to the suit property.

4. Order dated 12th March, 2007 passed in CS (OS) No. 1685/2006 is reproduced as under:

*“This is an application filed on behalf of the defendant, under Section 151 of the Code of Civil Procedure. An advance copy of this application was served on the defendant on 07.03.2007. Learned counsel for the non-applicant is present in Court and he disputes the signatures on the index. Another copy of this application has been handed over to the learned counsel for the plaintiff.
Notice. Learned counsel for non-applicant accepts notice.
List on 19.03.2007, the date already fixed. Till the next date, parties are directed to maintain status quo with respect to the suit property.”*

5. Thereafter, by order dated 03rd April, 2007, the suit was disposed of by referring the same to an Arbitrator to adjudicate the disputes pending between the parties. It was further directed that the interim order dated 12th March, 2007 is confirmed till the disposal of the arbitration proceedings. Order dated 03rd April, 2007 passed in CS(OS) No. 1685/2006 is reproduced as hereunder:

“After some hearing, learned counsel for the parties agree that a retired Judge may be appointed as an Arbitrator to adjudicate upon all disputes and differences, claims and counter claims arising out of a Collaboration Agreement dated 27.06.2005 which was entered into between the parties. Parties also agree that Hon’ble Mr. Justice S.K. Mahajan, (C-271, Defence Colony, New Delhi; Mobile No.9873304200) a former Judge of this Court may be appointed as an Arbitrator.

In view of this, Hon’ble Mr. Justice S.K. Mahajan, (C-271, Defence Colony, New Delhi; Mobile No.9873304200) a former Judge of this Court is appointed as an Arbitrator to adjudicate upon all disputes and differences, claims and counter claims between the parties. Learned Arbitrator would be entitled to fix his own fee. The fee shall



be borne by both the parties equally. Liberty is granted to the parties to file an application for interim relief including directions as to how the building work can be completed. In view of the same, nothing further survives in the present suit and the same is accordingly disposed of. The interim Orders dated 04.09.2006 and 12.03.2007 are confirmed till the disposal of the arbitration proceedings. Liberty is granted to the parties to approach the learned Arbitrator for vacation/variation of the interim orders, if required.

Parties to appear before the learned Arbitrator on 22.04.2007 at 4:30 pm.

Let a copy of this order be sent to the learned Arbitrator, Dasti."

6. This court is informed that after reference to the learned arbitrator, the Arbitral Award has since been passed on 04th July, 2019.
7. Learned Senior Counsel appearing for the petitioner submits that the respondents are in willful disobedience and violation of the *status quo* orders dated 12th March, 2007 and 03rd April, 2007, as they have created third party interests in the suit property, despite the aforesaid status quo orders.
8. Learned Senior Counsel has brought the attention of this court to the balance sheet as on 31st March, 2008 of respondent no.1 to show that advance has been taken by respondent no.1 against the floors from Mr. Ashok Gupta, Mr. Sunil Goel and Mr. Avdhesh Mittal, who are directors of respondent no.1 - M/s Showman Construction & Impex Pvt. Ltd..
9. He further submits that advance has also been taken from one Ms. Archana Gupta, who is not a director in the said respondent no. 1-M/s Showman Construction & Impex Pvt. Ltd.
10. Thus, he submits that a complete stranger has been introduced qua the transaction of the property in question, in clear violation of the *status quo* orders dated 12th March, 2007 and 03rd April, 2007.
11. It is further submitted that the petitioner came to know about the



aforesaid fact only when the said balance sheet was filed in the second supplementary charge-sheet dated 7th May, 2018 issued against the respondent pursuant to the FIR lodged by the petitioner against the respondent.

12. On the other hand, learned counsel appearing for the respondents submit that the present contempt petition is not maintainable for the reason that the present contempt petition has been filed for violation of interim orders passed in a suit. It is submitted that in case the petitioner was aggrieved by any alleged violation by the respondents, then the petitioner had the legal remedy under Order 39 Rule 2(a) of the Code of Civil Procedure (“CPC”), 1908.

13. Learned counsel appearing for respondent nos. 1 and 2 submits that no third party interest has been created with respect to the property in question.

14. He further submits that only loan had been taken for the purposes of construction.

15. He further submits that the loan by respondent no. 1 was taken prior to the *status quo* orders of 12th March, 2007 and 03rd April, 2007.

16. Supporting the submissions made by learned counsel for respondent no. 1, learned counsel appearing for respondent nos. 3 and 4 submits that respondent nos. 3 and 4 were never made parties in the arbitration proceedings. He further submits that respondent nos. 3 and 4 are not claiming any lien or interest in the property in question.

17. This court has heard learned counsel for the parties and has perused the record.

18. Perusal of the record shows that the dispute between the parties with



respect to the Collaboration Agreement dated 27th June, 2005, became the subject matter of the Arbitral Award dated 04th July, 2019 passed by the learned arbitrator.

19. By award dated 04th July, 2019 the learned arbitrator ultimately held that both the parties are entitled to the property in question in the ratio of 50-50 each. The relevant paragraph of the Arbitral Award dated 04th July, 2019 passed by the learned arbitrator, is reproduced as under:

"I also consider that party no. 1 is not entitled to damages as claimed for non-use of 3 floors since it could not have used upper three floors unless it had constructed ground floor and basement and provided additions as per annexure to party no. 2.

Relief

Under above circumstances I consider that most appropriate method of doing justice between the parties is that both the parties should be held entitled for reasonable share in this property. Party no. 2 had purchased this property vide two sale deeds, one in respect of ground floor and basement and other in respect of floors above ground floor. While entering into collaboration agreement it kept with It ground floor and basement of the building to be constructed and declared that In view of cost of construction and additional amount paid, party no. 1 shall have right over floors above ground floor. Both the parties had entered into collaboration agreement for commercial benefits. It appears owner wanted to get the basement and ground floor constructed free of cost and also took a substantial part of the consideration which it had paid for purchase of a property, from the builder. I consider the most equitable method is to apportion the value received from this building either from public auction or from mutual auction between the parties in the ratio of 50-50.

Efforts were made during the continuation of arbitration proceedings to settle the matter between the parties by mutual consent. These efforts did not substantiate. However, due to the efforts, two values of building were stated to the Tribunal. One party no. 2 assessed the value of building as Rs.20 crore and second when party no. 2 filed a quote from 3rd party, who valued the property at Rs. 22 crore. I consider that Rs. 22 crore is the proper value of the building. The 1st choice is given to party no.1 either to receive 11 crore from party no. 2 as payment of its share and given up all its rights in the property to party no. 2 by executing documents relinquishing its rights in favor of party no.2 or to pay Rs. 11 crore to party no.2 and own the entire building. In such a case party no.2 shall execute necessary sale deeds



in favour of party no. 1. In case party no. 1 is not willing to buy the share of party no. 2 under collaboration agreement by paying Rs. 11 crore and party no. 2 is also not ready to buy share of party no. 1, the property be put to public auction and proceeds, after meeting auction expenses be divided between the parties in the ratio of 50:50. Both the parties to bear their respective cost of arbitration.”

20. This court is informed that both the parties i.e., the petitioner as well as respondent no.1 have filed objections against the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996, which is stated to be still pending. It is informed that the said petition under Section 34 of the Arbitration Act, is next listed for hearing on 01st February, 2024.

21. This court also notes the reply filed by respondent nos. 3 and 4, wherein it is categorically submitted that the said respondents were only generating funds for the purposes of raising the construction and had taken loan for that purpose. It is further recorded in the reply that the respondents have never created any third party interest and the loan was given by the directors to the company for the purposes of construction only. The relevant portion of the reply filed on behalf of the respondent nos. 3 and 4 is reproduced as under:

“xxx xxx xxx

7-8 That the contents of para nos. 7 and 8 of the Petition are wrong and denied and the Petitioner be put to strict proof of the same. It is completely wrong and specifically denied that Contemnors no. 3 and 4 have purchased the Suit property or any right over the Suit property from the Contemnor no. 1 company in the past. It is respectfully submitted that the contentions raised in Chargesheet are incorrect as the same are on the basis of wrong facts. It is completely wrong and specifically denied that the Orders dated 12.03.2007 and 03.04.2007 were breached in any manner by the Contemnors no. 3 and 4 and had thus committed contempt of the Court orders. It is respectfully submitted that the Petitioner is deliberately trying to twist the facts by selectively reading the contents of the Balance Sheet which clearly shows that the Advances were given by the Directors to the Contemnor no. 1 company well before the passing of the orders dated 12/03/2007 and 03/04/2007 for the purpose of undertaking the



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construction work by the Contemnors no. 1 company. That further no right of any sort were ever created in respect of the Suit property in favour of the Contemnors no. 3 and 4 till date. Thus the present petition being devoid of any material fact is thus liable to be dismissed by this Hon'ble Court.
xxx xxx xxx

22. It is also relevant to note the reply filed by respondent nos. 1 and 2, wherein the facts regarding taking the loan, which was taken much prior to the orders dated 12th March, 2007 and 03rd April, 2007 in CS(OS) No. 1685/2006, have been detailed. The relevant portion of the reply filed by respondent no. 1 and 2 reads as under:-

“xxx xxx xxx

7&8 In reply to para nos. 7 and 8 of the Petition, it is submitted that the Petitioner is alleging that despite the Orders dated 12.03.2007 and 03.04.2007, the Respondent No. 1 took advances from the Respondent NO.s 2 to 4, and as such, committed contempt of the Court. The Petitioner has also relied upon the Balance Sheet of the Respondent No. 1 as on 31.03.2008. It is respectfully submitted that the Petitioner is deliberately trying to twist the facts. In this regard, it is submitted that the Respondent Nos. 2 to 4 were the Directors of the Respondent No. 1 when the aforesaid Collaboration Agreement dated 27.06.2005 was entered into. Further, since as per the Collaboration Agreement, the Respondent No.1 Company was to get three Floors i.e. the First Floor, Second Floor and the Third Floor, to raise the construction and for generating the funds, the three Directors, Mr. Avdhesh Mittal, Mr. Sunil Goel and Mr. Ashok Gupta and Mrs. Archana Gupta wife of the auditor of the company namely Mr. Manoj Gupta advanced money against the said Floors, however, the same was done much prior to the passing of the aforesaid Orders dated 12.03.2007 and 03.04.2007, which fact would be clear from the Balance Sheet filed by the Petitioner, which shows that the said advance against Floor amounting to Rs. 96,59,000/- was also there in the Balance Sheet as on 31.03.2007, meaning thereby that the said advances were received prior to the passing of the said Orders.

In any event, the Respondent Nos.2 to 4 being the Directors of the Respondent No.1 had every right to give advance against the Floors to generate funds for construction, and as such, they had never committed any disregard to the Orders, passed by this Hon'ble Court. Further, they never created any third party interest and the loan was given by the Directors to the Company for the purposes of construction only. It may be



pertinent to mention This fact would show that the said Advances against the said Floors were given prior to the passing of the said Orders and the Application under reply is nothing but an abuse of the process of law and as such is liable to be dismissed.

xxx xxx xxx”

23. During the course of hearing, learned counsel appearing for respondent nos. 1 and 2 has stated in clear terms that no third party interest has been created in favour of respondent nos. 2, 3 and 4 or Ms. Archana Gupta in the property in question.

24. Likewise Learned counsel appearing for respondent nos. 3 and 4 also confirms the fact that respondent nos. 3 and 4 are not claiming any right, title or interest over the property in question.

25. This court also notes the submission made by learned counsel for respondent nos.1 and 2 that the loan in question was taken prior to the passing of the orders dated 12th March, 2007 and 03rd April, 2007.

26. Thus, it is the clear contention on behalf of the respondents that no loan was taken after passing of the *status quo* orders dated 12th March, 2007 and 03rd April, 2007.

27. This court also notes that no third party has ever come forward to claim any right, title or interest over the property in question.

28. Considering the aforesaid statements made on behalf of the respondents, as also the reply filed on behalf of the respondents, it is clear that no third party rights have been created with respect to the property in question.

29. In view of the aforesaid, no *prima facie* case is made out to show that there is any violation of the orders dated 12th March, 2007 and 03rd April, 2007 by the respondents.



30. Considering the aforesaid, no merit is found in the present petition. Accordingly, the present petition is disposed of along with all the pending applications.

31. Needless to state that upon disposal of the present contempt petition, it is the final order which will have effect and any interim orders that were passed in the present proceedings, will cease to have any effect.

MINI PUSHKARNA, J

JANUARY 22, 2024/kr