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

% ***Date of Decision: 28th October, 2026***

\# **CNR No. DLHC010466042026**

\+ O.M.P.(I) (COMM.) 449/2026

AXIS FINANCE LIMITED .....Petitioner

Through: Mr. Vivek Sinha and Mr. Vivek Malik, Advocates.

versus

MURTUZA HUSSAIN & ORS. .....Respondents

Through: Mr. Shubhangam Thakur, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T *(oral)***

1. The present petition has been filed under Section 9 of *Arbitration and Conciliation Act, 1996* read with Section 151 CPC and seeks, *inter alia,* following relief:-

> *"…….*
> *……*
> *d. Pass an order restraining the Respondents, their agents, assigns or any person claiming through or under them from selling, transferring, alienating, encumbering, or creating any third-party rights, title or interest in the mortgaged property being" Plot No.- 287,117,312, Sheet No- 05, Star No- 5/7,6/4, Kh.no-156/39156/44 156/51156/76Mauza- Talapara, Kranti kumar Bhartiya Nagar Ward No.- 5/7,6/4, Kh.no.- 156/39 156/44 156/51 156/76Mauta- Talapara, Kranti kumar Bhartiya Nagar Ward No.-14, Area -7090 sqft, Old P.h.no.- 22/28, New P.h.no-00039, Old R.n.m. - Bilaspur, New R.n.m.-Juna Bilaspur, Tah. Dist.- Bilaspur C. G. Chhattisgarh BILASPUR(CGH) 495004.", or otherwise dealing with the said Property in any manner whatsoever, and to maintain status quo with respect thereto during the pendency of the present Petition;*
> *……*
> *……."*

2. Petitioner is a *Non-Banking Financial Company* and as per the averments made in the petition, Loan facility was sanctioned to the

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respondents and they were disbursed a sum of Rs. 3,50,00,000/- *vide Facility Agreement* dated 29.02.2024. To avail said loan, the borrowers (respondents herein) had mortgaged their abovesaid property of Bilaspur.

3. The loan has been recalled.

4. The outstanding amount is stated to be Rs. 3,45,40,330/- as on date of issuance of notice i.e. as on 06.02.2026.

5. Learned counsel for the petitioner submits that the *Loan Facility Agreement* contains arbitration clause. Reference is made to clause 36 of the abovesaid Agreement which, *inter alia*, provides that the seat for arbitration shall be Mumbai and/or Delhi, as may be determined by the lender.

6. The property which the borrower offered for mortgage is also the same as mentioned in the abovesaid prayer clause, extracted above.

7. Learned counsel for the petitioner submits that they have already invoked arbitration by sending a communication on 12.10.2026 and if the respondents do not consent to the name of suggested Arbitrator, they would file appropriate application seeking appointment of Arbitrator. He, however, submits that since the outstanding is huge and the petitioner has gathered information which indicates that the respondents are in the process of disposing of their assets, including the abovesaid property, the interest of the petitioner may be protected so that its legitimate claim does not get defeated and the arbitral proceedings do not get frustrated.

8. Mr. Shubhangam Thakur, learned counsel for respondents has joined the proceedings through *video-conferencing*. He, while refuting the abovesaid contentions, submits on instruction that the respondents are in possession of abovesaid residential property situated at Bilaspur, Chattisgarh and they have, as on date, no intention to create any third party interest of any nature

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whatsoever. He, however, submits that he has not received any instructions from the respondents with respect to the receipt of any notice of invocation of Arbitration.

9. Needless to mention, jurisdiction under Section 9 of *Arbitration and Conciliation Act, 1996* is, essentially, protective and preservative in nature and is intended to safeguard the subject matter of Arbitration and to preserve the efficacy of the arbitral remedy, pending constitution of Arbitral Tribunal. Though, the claim in question is with respect to the outstanding dues of a loan amount, fact remains that the respondent, while availing the abovesaid loan facility had also mortgaged the abovesaid property and if the abovesaid property is transferred or alienated before the constitution of the Arbitral Tribunal, it may cause serious prejudice to the petitioner. Thus, on a holistic assessment, the petitioner has established a *prima facie* arbitral claim warranting interim protection. The disputes raised by the petitioner cannot be conclusively adjudicated in proceedings under Section 9 of the Act. At the same time, the apprehension expressed by the petitioner regarding alienation of the subject property cannot be brushed aside.Balance of convenience also lies in preserving the existing position, *albeit*, for a limited period.

10. Resultantly, the present petition is disposed of with direction to respondents not to create any third-party interest of any nature whatsoever, with respect to the abovesaid property as described in "prayer (d)" of the petition till any decision of application to be filed under Section 17 of *Arbitration and Conciliation Act, 1996* by the petitioner herein. It is, however, clarified that the petitioner would not show any laxity of any nature whatsoever and if situation so arises, application seeking appointment of Arbitrator be filed without any further delay. The restraint order would remain

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in operation for a period of ninety days from today or till adjudication of proposed application under Section 17 of *said Act*, whichever is earlier.

11. Petition stands disposed of in aforesaid terms.

12. Nothing contained herein shall be construed as an expression of opinion on the merits of the disputes between the parties. The Arbitral Tribunal shall decide all the issues independently, uninfluenced by any observations made herein.

**(MANOJ JAIN)**
**JUDGE**

**OCTOBER 28, 2026/***sw/sk*

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