

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>st</sup> DAY OF DECEMBER, 2015

PRESENT

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY  
AND

THE HON'BLE MR.JUSTICE B.VEERAPPA

M.F.A. NO.9645 OF 2015 (AA)

C/W

M.F.A.NOS.9646, 9648 AND 9654 OF 2015 (AA)

Between:

M/s. Adavaitha Ventures Pvt. Ltd.,  
A Private Limited Company Incorporated  
Under the Companies Act, 1956 and  
Having its Registered Office at  
#5, Intermediate Ring Road,  
Domlur, Bangalore – 560 071,  
Represented by its Vice President  
Sri Reddappa.

...Appellant

Common in all appeals

(By Shri Ashok Haranahalli, Sr.counsel  
For Sri Achappa P.B. Advocate)

And:

M/s. Technocon Builders,  
A Partnership Firm  
No.SF-8, 9 and 10,  
Karuna Complex,

#337, Sampige Road,  
Malleshwaram,  
Bangalore – 560 003  
Represented by its Managing Partner  
Sri M.K. Krupakara Rao.

...Respondent  
Common in all appeals

(By Shri G.K.V.Murthy and R.K.Sourabh, Advocates)

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MFA No.9645/2015 is filed under Section 37(1)(a) of Arbitration and Conciliation Act, against the order dated 9.12.2015 passed on IA No.2 in A.A.No.385/2015 on the file of the 11<sup>th</sup> Additional City Civil Judge, Bengaluru City, allowing IA No.2 filed under Order 39 Rules 1 and 2 read with Section 151 of CPC

MFA No.9646/2015 is filed under Section 37(1)(a) of Arbitration and Conciliation Act, against the order dated 9.12.2015 passed on IA No.3 in A.A.No.385/2015 on the file of the XI Additional City Civil Judge, Bangalore City (CCH No.89), dismissing IA No.3 filed under Order 39 Rules 1 and 2 read with Section 151 of CPC and read with Section 9 of Arbitration and Conciliation Act.

MFA No.9648/2015 is filed under Section 37(1)(a) of Arbitration and Conciliation Act, against the order dated 18.12.2015 passed on IA No.8 in A.A.No.385/2015 on the file of the Principal City Civil and Sessions Judge, at Bangalore, rejecting IA No.8 filed under Section 151 of CPC.

MFA No.9654/2015 is filed under Section 37(1)(a) of Arbitration and Conciliation Act, against the order dated 18.12.2015 passed on IA No.6 in A.A.No.385/2015 on the file of the Principal City Civil and Sessions Judge, at Bangalore, issuing direction to Court P.S. to give police help

to implement order on dated 9.12.2015 regarding not to proceed to construction over the suit.

These MFAs coming on for admission this day, **Anand Byrareddy J** delivered the following:

### **JUDGMENT**

Heard the learned counsel for the parties.

These appeals are disposed of by a common order.

The appellant is a Developer who is developing a residential property into an apartment complex. The respondent herein has entered into a contract with the appellant herein in respect of the same. It transpires that, there were disputes between the respondent and the appellant, pursuant to which the respondent chose to approach the District Court under Section 9 of the Arbitration and Conciliation Act, 1996 seeking various reliefs, namely, restraining the appellant from entrusting the work to any other party and yet another application seeking the relief of police protection, to enable the appellant to remove his material from the work site and the

appellant in turn had also filed an application in the very proceedings seeking to restrain the respondent from interfering with the work being carried out. The appellant had also filed an application seeking joint measurement of the work which was already executed by the respondent. The applications filed by appellant having been dismissed and the applications filed by the respondent having been allowed, the present appeals are filed.

2. It is not in dispute that the appellant had chosen to terminate the contract, since according to the appellant the respondent had abandoned the work. Therefore, the question of permitting the respondent to continue with the work would not arise. In any event, in such a situation, the learned Senior Advocate Shri Ashok Haranahalli would submit that, the parties cannot be held to perform their part of the contract when there are disputes between them. The only circumstance that would require to be ensured is that the joint measurement is taken of the works that are

already executed by the respondent in order to enable him to raise whatever claims he is entitled to. The respondent is entitled to remove his machinery and material from the work site as a matter of course. Police protection would not arise. It is a contractual matter which has to be worked out in accordance with law.

3. The learned counsel for the respondent does not dispute this position.

4. Therefore, the only aspect that requires to be considered is the modality of carrying out joint measurement of the work carried out. According to Shri Haranahalli, the joint measurement is to be supervised by the Architect appointed by the parties under the contract. This is to be done in the presence of representatives of the appellant and the respondent which shall be construed as a joint measurement.

5. The learned counsel Shri G.K.V. Murthy however would contend that, the respondent does not have confidence in the Architect of the appellant in carrying out such measurement and hence an independent Architect be appointed to carry out the measurement.

6. In our view, it would be appropriate if an Architect to be nominated by the respondent is present along with the Architect nominated under the contract to carry out joint measurement. In the event there is a difference of opinion between the two Architects, the matter could be referred to a third Architect whose opinion would be final. This last mentioned measure shall be a matter to be placed before the Arbitral Panel, if and when the matter is referred to Arbitration Proceedings. The respondent shall nominate his Architect to carry out joint measurement of the work done by the respondent and the respondent is in turn permitted to remove his material from the work site and which shall be duly acknowledged by both the parties or

their authorised representatives. Such joint measurement shall be carried out on 5.1.2016 at 11 a.m.

7. The law provides that in such a situation if the respondent withdraws from the work site and removes his material, it is open for the appellant to engage another agency. The respondent shall remove his material and other machinery from the work site within 15 days from 5.1.2016 and appellant shall thereafter be free to engage a third agency to carry on the work.

The appeals stand allowed. In terms of this order, the matter before the Court could also be disposed of in view of this judgment.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

ap