

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND TWENTY

PRESENT

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND**

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL NO: 187 OF 2020

Appeal Under Section 37 of the Arbitration and Conciliation Act, 1996
against the order dated 03-03-2020 in Arbitration O.P. No. 125 of 2019 on the file
of the Court of the XI Additional Chief Judge, City Civil Court, Hyderabad.

Between:

V. Ashok Kumar, S/o Late Mr. V.V.K. Chow Aged about 46 years, Occ. Business, R/o
Plot No 91, Navnirman Nagar, Behind Bharatiya Vidya Bhavan. School, Road No 71,
Jubilee Hills, Hyderabad. ... **Petitioner**

AND

1. Rajesh Mathur , S/o.Late Raj Karan Mathur, Aged about 54 Years, Occ.
Business, R/o Flat No 402, Krish Vally, Mithalia Nagar, Road No 12, Banjara
Hills, Also at H No 11-4-610, Flat No 610 B Block, AC Guards, Redhills,
Hyderabad Also at H No 262, Kismathwa village, Near Hanuman Temple,
Rajender Nagar.
2. Dr. Pilli Raju, S/o Pilli Yadagiri, Aged about 53 years, Occ. Medical Practioner,
R/o H No 3-114, Hanuman Nagar, Chaitanyapuri, P and T Colony, Saroornagar,
Ranga Reddy District.
3. Raj Kumar Kimtee, S/o Devender Singh Kimtee, Aged 47 years, Occ. Business,
R/o 4-5-171, Hasmath gunj, Sultanbazar, Hyderabad. ...**RESPONDENTS**

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the
affidavit filed in support of the petition, the High Court may be pleased to
pass and order directing respondent No 1 to deposit/furnish surety for a sum of Rs.
1,87,50,000/- (Rupees one Crore Eighty Seven Lakhs Fifty Thousand) forthwith, and
in the event of his failure order attachment before judgment in respect of the schedule
property i.e. all that flat having built up area of 2414 Sq. Feet including the common
areas and balconies and bearing No 402, situated in South wing of Krishe valley,
including two (02) No. of car parking and undivided share of extent of 76 SQ Yds,
situated at S No 29/77, TS No 26, Block - K, Ward No 12 of Syed Nagar, First Lancer,
and bearing Muncipal house No(s) 10-5-385/55/C, 10-5-385/55/B, 10-5-385/55/D,
10-5-391/50/B, 10-5-391/10/A, 10-5-391/10/1/D, 10-5-391/10/1/E, 10-5-385/55/E, 10-
5-385/35/A, 10-5-385/3/A, 10-5- 390/B/4, 10-5-391/5/4, 10-5-391/5/4/A and 10-5-
54/1, Hyderabad, Telangana and bounded by: North: Corridor and Entrance, South:
Open to Sky, East: Open to Sky, West: Open to sky till the time of disposal of the
arbitration proceedings .

IA NO: 3 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the documents as additional material papers.

Counsel for the Appellant: SRI VIVEK JAIN

Counsel for the Respondent No.1 : SRI V. SRINIVAS

Counsel for the Respondent Nos. 2 & 3 : None appeared

The Court made the following: ORDER

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

CIVIL MISCELLANEOUS APPEAL No.187 of 2020.

JUDGMENT: (per Hon'ble Sri Justice M.S.Ramachandra Rao)

Heard Sri Vivek Jain, learned counsel for appellant and Sri V.Srinivas, learned counsel for 1st respondent.

2. This appeal is preferred by the appellant challenging the order dt.03-03-2020 in A.O.P.No.125 of 2019 of the XI Additional Chief Judge, City Civil Court, Hyderabad.

The stand of the appellant in the O.P

3. The said O.P. was filed by the appellant against the respondents under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') to direct the 1st respondent to furnish surety for a sum of Rs.1,87,50,000/- forthwith and in default, to attach the schedule property mentioned in the A.O.P. before judgment.

4. The case of the appellant in the A.O.P. was that the appellant was a businessman and was a friend of respondent Nos.1 and 2, who were doing real estate business; that 1st respondent informed the appellant that he is doing real estate business and that he is developing a layout in Shamshabad and is negotiating for purchase of land from one Krishna Reddy and Srikanth Reddy in Sy.No.64/AA/1 to 64/AA/4 of Kishanguda village, Ootpally Gram Panchayat, Shamshabad Mandal; the 1st respondent told the

appellant that the land was available at Rs.3,08,00,000/- per acre and if the said land is purchased, it can later be sold as plots and appellant can make good profits. The appellant contended that he agreed to invest Rs.1,87,50,000/- for proportionate share of land along with Dr.Pilli Raju (2nd respondent) and respondent No.1; that appellant and respondents also agreed to purchase the land jointly as per investment ratio; that an area of 13,000 sq.yds could be available after development, which would be sold at Rs.15,500/- per sq. yd; and that the entire transaction would be completed within 60 days from the date of entering into Memorandum of Understanding dt.09-09-2019.

5. The appellant claims to have made the said payment to 1st respondent, but alleged that 1st respondent kept him in dark; that the appellant came to know that the 1st respondent along with his wife and one Balakrishna colluded among themselves and obtained two agreements of sale from Krishna Reddy and Srikanth Reddy, the original owners of the land in favour of another associate M/s.Amarat Estates Private Limited for the above land and that the 1st respondent had cheated him. He claims to have lodged F.I.R.No.759/2019 on 18-11-2019 before the XI Additional Chief Metropolitan Magistrate, Nampally, which is pending investigation.

6. The appellant alleged that if the 1st respondent succeeds in selling away the his assets, the appellant would not be able to recover the amount paid by him to the 1st respondent.

7. He relied on arbitration clause in the Memorandum of Understanding and filed O.P. stating that he intends to initiate arbitration proceedings against the respondents and in order to preserve the property, interim measures under Sec.9 such as attachment of the assets of the 1st respondent before judgment be granted.

The stand of the 1st respondent in the O.P

8. The 1st respondent filed a counter opposing the said contentions.

9. He contended that he had never asked the appellant for investment in the venture and the appellant and his friends pressurized the 1st respondent to include them in the venture because of possible profits. He admitted entering into Memorandum of Understanding with the appellant and others, but stated that the appellant did not invest the total amount in time as per the understanding because of which the 1st respondent suffered heavy loss. He denied that he received any cash from the appellant to fulfill the terms of the Memorandum of Understanding. He contended that he did not receive Rs.1,47,00,000/- through his personal account from the appellant for investment in the real estate business. He denied playing any fraud on the appellant.

10. He blamed the appellant for paying fraud on him and colluding with respondent Nos.2 and 3 and stated that the appellant never cooperated with the 1st respondent to complete the transaction with a fair mind and threatened him with false and fabricated criminal

cases. He also claimed to have lodged a criminal complaint on 17-12-2019 with the Banjara Hills Police Station against the appellant.

11. According to him, clause-5 of the Memorandum of Understanding is the arbitration clause, but it can only be invoked if the Project commences and in case if any disputes arising during the time of profit sharing only.

12. According to him, arbitration proceedings cannot be initiated since the Project had not yet commenced and Section 9 of the Act also cannot be invoked for any interim measures.

13. He also stated that no request has been made by appellant by issuing any notice for appointment of an arbitrator. He further raised a plea that Memorandum of Understanding is unregistered one and is not admissible in law. He stated that if the appellant intends to recover any amount, he ought to have filed a civil suit, but he cannot initiation arbitration proceedings.

14. The 2nd respondent remained *ex parte* in the O.P. The appellant himself filed memo stating that 3rd respondent is a proforma party.

The order of the Court below

15. In the Court below, the appellant filed Exs.P-1 to P-8.

16. By order dt.03-03-2020, the Court below dismissed the O.P.

17. After referring to the contentions of the appellant, it observed that the material filed by the appellant no doubt discloses about transfer of Rs.1,47,00,000/- by the appellant to the 1st respondent

and that Ex.P-4 sale deed dt.26-04-2019 relates to the property belonging to 1st respondent which is mentioned as 'A' schedule property in the O.P.

18. It then referred to Clause-5 of the Memorandum of Understanding between the parties which states that *"in the event of any dispute or difference arising between the parties during the project relating to any matter concerning the business, the same shall be decided by a reference to an arbitration duly appointed by the partners and the decision of the arbitrator shall be final and binding upon the partners"*.

19. It then interpreted the said clause to mean that as per admitted facts, the project had not yet commenced and the arbitration clause would apply only with reference to dispute which arose between them *during* the course of the project; and the appellant had no right to invoke Section 9 of the Act before commencement of the project. It also observed that the appellant had not made any request for initiating the arbitration pursuant to the arbitration clause and the appellant had not filed any agreement of sale referring to any Memorandum of Understanding for purchase of land. It held that the allegations in the O.P. that 1st respondent was trying to leave India and jurisdiction of the Court by selling properties to avoid payments as alleged in the O.P. is not sufficient to grant any interim relief to the appellant.

20. Challenging the same, this appeal is filed.

The present Appeal

21. It is contended by the leaned counsel for appellant that the 1st respondent had unequivocally admitted not only execution of the Memorandum of Understanding dt.09-09-2019 but also receipt of Rs.1,47,00,000/- to his personal account, but did not offer any explanation as to what happened to the money received by the appellant and therefore the Court below should have allowed the O.P. and directed the respondents to provide security for the claim and in default restrained the 1st respondent from alienating the subject property.

He contended that non-issuance of notice invoking arbitration before filing application under Section 9 of the Act does not disentitle the appellant for interim measures under Section 9 of the Act.

He stated that a notice was issued on 12-02-2020 seeking appointment of an arbitrator and this was not noticed by the Court below.

According to him, the property which was proposed to be developed under the Memorandum of Understanding dt.09-09-2019 now stands sold to M/s.Amrat Estates which is an associate of the 1st respondent and even if independently the transaction had not materialized, the 1st respondent cannot retain the amounts received from the appellant. According to him, arbitration Clause-5 in the Memorandum of Understanding covers the situation in the case and

the Court below erred in holding that the said clause would apply only after commencement of the project.

22. Learned counsel for 1st respondent, however, contended that the order passed by the Court below is justified and it is a well considered one which did not warrant any interference by this Court.

He reiterated that the Memorandum of Understanding dt.09-09-2019 would come into operation only after the land was purchased and project commenced and since purchase of the land was not concluded, the Memorandum of Understanding is inoperative and the arbitration clause therein cannot be invoked.

It is submitted that purchase of land contemplated in the Memorandum of Understanding has not commenced and the arbitration clause is available to be invoked only if disputes arose during the execution of the said project. He placed reliance on the judgments of the Supreme Court in **Adhunik Steels Ltd., Vs. Orissa Manganese and Minerals Pvt. Ltd**¹ and **Raman Tech. and Process Engg. Co. and Ors. Vs. Solanki Traders**².

23. We have noted the contentions of both sides.

The consideration by the Court

24. The Memorandum of Understanding dt.09-09-2019 contemplates that the parties to the said MoU had entered into

¹ (2007) 7 SCC 302

² (2008) 2 SCC 302

agreement of sale in respect of the land admeasuring Ac.3.38 gts at Kishanguda village, Ootpally Gram Panchayat, Shamshabad Mandal; that the appellant had contributed Rs.1,87,50,000/-; that the share of the appellant is 25% in the land; and the parties to the document would develop the land into plots and sell it at Rs.15,500/- per sq. yd within 60 days from the date of MoU.

25. Clause-5 of the said Memorandum of Understanding states:

" 5. In the event of any dispute or difference between the partners during the project relating to any matter concerning the business the same shall be decided by a reference to an arbitration duly appointed by the partners and the decision of the arbitrators shall be final and binding upon all the partners. "

26. In our considered opinion, the project contemplated under the MoU is the sale of land after making plots after providing various amenities i.e. roads, parks etc. , but there must be sale of the land by the original owners of the property to the 1st respondent and the appellant for the project to commence. Without sale of land in favour of the parties to the MoU, it would not be possible to them to sell it to third parties after making plots.

27. Admittedly, no sale deed was executed in favour of any of the parties to the MoU by the owners of the land and even according to the appellant, there was a sale deed executed by them in favor of M/s.Amarat Estates, which is an associate of the 1st respondent.

28. Therefore the project in question did not fructify at all since the land is now sold to a third party M/s. Amarat Estates by the original owners.

29. A close reading of the arbitration clause indicates that it would operate only to resolve the dispute or differences arising *during the project*. If the project itself had not commenced, then the arbitration clause cannot be invoked.

30. The Court below had correctly interpreted the clause in our opinion and rightly held that the appellant cannot invoke the said arbitration clause or Section 9 of the Act for interim measures.

31. We therefore do not find any error or infirmity in the order passed by the Court below warranting interference by us in exercise of appellate jurisdiction.

32. Accordingly the appeal fails and it is dismissed. No costs.

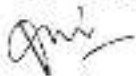
33. Pending miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

Sd/-M.SANTHI VARDHANI
JOINT REGISTRAR
SECTION OFFICER

To

1. The XI Additional Chief Judge, City Civil Court, Hyderabad.
2. One CC to SRI. VIVEK JAIN Advocate [OPUC]
3. One CC to SRI K. L. B. KUMAR Advocate [OPUC]
4. One CC to Sri V. Srinivas, Advocate (OPUC)
5. Two CD Copies



HIGH COURT

MSRJ & TAJ

DATED:30/07/2020

ORDER

CMA.No.187 of 2020

11/8/20



Dismissing the CMA without costs

6^{SW} copies
Dt-7/8/2020