

Delhi High Court: Courts Should Refrain from Interfering with Well-Reasoned Interim Order Passed Under Section 17 of Arbitration & Conciliation Act, 1996

Judgment Date: 10 July 2023

The **Delhi High Court** has held that the Court under **Section 37** of the **Arbitration and Conciliation Act, 1996** (A&C Act) should not interfere with a reasoned order of the Tribunal granting interim relief based on thorough examination of the matter.

The single Judge **Justice Sachin Datta** observed, *“The law is also well settled that this court while exercising jurisdiction under Section 37 of the Act would be loath to interfere with an interim measure of protection granted by an Arbitral Tribunal, particularly when the order passed under Section 17 is well reasoned and based on a thorough and minute examination of the matter, as in the present case.”*

The disputes between the parties arose in the context of a Joint Venture Agreement (JVA) dated 30 August, 2019, between the respondent no.1 (claimant before the Arbitral Tribunal) and the respondent nos.2 to 8 herein, to develop a warehousing project on a property.

The Respondent Nos. 2-8 were to transfer the subject properties to an LLP to be incorporated by Respondent No.1 for development of the project. Pursuant to the Joint Venture Agreement, a part consideration of Rs.1,50,000 was paid to each of the respondent nos.2 to 8. As such, the respondent no.1/claimant claimed to have paid a total of Rs.10,50,000 to the respondent nos.2 to 8 at the time of execution of the Joint Venture Agreement.

The Joint Venture Agreement contemplated profit sharing between the respondent no.1 and the respondent nos.2 to 8 after development of the warehousing project. It was further contemplated that the sale deeds in favor of the newly incorporated LLP i.e., SY Logistics Park LLP would be executed by 31 December, 2019.

Disputes arose between the parties on account of alleged failure on the part of the respondent nos.2 to 8 to execute the sale deeds, as contemplated in the Joint Venture Agreement. Consequently, the respondent no.1 invoked the Arbitration Clause contained in the Joint Venture Agreement and issued a notice invoking arbitration on 4 February, 2020. Subsequently, a petition under **Section 11** of the Arbitration and Conciliation Act came to be filed on 7 March, 2020 for the appointment of arbitrator.

However, in the interregnum, the Respondent Nos. 2-8 executed two sale deeds for the subject property in favors of the appellant. Consequently, the Respondent No.1 filed an application under **Section 9** of the Act seeking interim measures requesting the Court to direct the Court to maintain the status quo. The Court appointed the arbitrator in the Section 11 petition and directed the Respondent No. 1 to seek the interim relief before the Arbitral Tribunal.

The Arbitral Tribunal vide the impugned order dated 9 June, 2022 granted the interim relief sought by the Respondent No.1 and directed the respondent no. 2-8 not to create any third-party rights in the subject property and the appellant to maintain the status quo. Aggrieved by the impugned order, the appellant filed an appeal under Section 37 of the Act.

The Learned counsel for the appellant strenuously contended, that the appellant is a bonafide purchaser with consideration and has invested a huge amount in carrying out development/construction on the property in question. Further, the respondent no.1 belatedly invoked the arbitration clause as incorporated in the Joint Venture Agreement dated 30 August, 2009. However, even after filing the petition under Section 11 of the Act on 7 March, 2020, no steps were taken by the respondent no.1 to effect service on the respondent nos.2 to 8.

It was contended the Joint Venture Agreement is not capable of specific performance at all since it is in the nature of an agreement to enter into a partnership. It was submitted that the legal position is settled that such an agreement can never be specifically be enforced.

The Court was of the view that the Sole Arbitrator had rightly taken note of the fact that the sale deeds were executed in favor of the appellant by the respondent nos.2 to 8 after the notice invoking arbitration was issued by the respondent no.1 on 10 February, 2020, which was the date on which arbitral proceedings had commenced in terms of **Section 21** of the Act.

The Judge while noting the impugned order observed that the, learned Sole Arbitrator had also taken note of the amendment of **Section 10** of the Specific Reliefs Act 2018, as a result of which the grant of relief for specific performance is no longer discretionary. Reference in this regard was rightly made to the decision of the Supreme Court in the case titled as B. Santoshamma vs. D. Sarala.

The Court remarked, *“In case the interim measure of protection, as sought in the application under Section 17 of the Act is not granted and the appellant is permitted to deal with the property in question, then the main relief sought in the statement of claim would be rendered infructuous. The contention that the appellant has invested huge amounts of money in*

purchasing the land/property in question from the respondent nos.2 to 8 and carrying out the construction thereon cannot defeat the prior rights of the respondent no.1.”

The Court noted that the entire matter is still at large before the learned Sole Arbitrator. It was informed by respective counsel, that the parties are in the process of adducing evidence before the learned Sole Arbitrator.

Furthermore, the impugned order does not foreclose the right of any of the parties to the arbitration to place relevant material on record and/or take every contention as may be available under law before the learned Sole Arbitrator, at the time of final arguments, noted the Court.

“As such, the various legal contentions raised by the learned counsel for the appellant regarding the Joint Venture Agreement being not capable of specific performance and/or as to whether the appellant’s rights, as an alleged bonafide purchaser can be interdicted or not, are all issues which are yet to be determined by the learned Sole Arbitrator,” the Court discerned.

The Court observed that the findings rendered by the Tribunal in the impugned order are based upon the examination of the material facts and are unquestionable. The Judge opined that the Court under Section 37 of the A&C Act should not interfere with a reasoned order of the Tribunal granting interim relief based on thorough examination of the matter.

After examining catena of decisions, wherein it was held that the interference would only be permissible when the order is palpably arbitrary or unconscionable, the Court was of the view that there was no warrant to interfere with the impugned order dated 9 June, 2022.

Accordingly, the Court affirmed the impugned order and dismissed the appeal.

TAGS: #Delhi High Court #Justice Sachin Datta #Arbitration and Conciliation Act 1996

REFERENCE- <https://www.livelaw.in/high-court/delhi-high-court/delhi-hc-section37-ac-act-interim-order-arbitral-tribunal-courts-should-not-interfere-232839>