



2024:DHC:10107



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 27th December, 2024+ CS(COMM) 1213/2024, I.A. 49931/2024 (for interim injunction), I.A. 49934/2024 (Exemption), I.A. 49935/2024 (seeking enlargement of time for court fees)

1. Mr. PAWAN GUPTA
S/o Late Shri Muna Lal GuptaPlaintiff No.1
2. Mrs. RENU GUPTA
W/o Mr. Pawan GuptaPlaintiff No.2

Through: Mr. Arvind Nayar, Senior Advocate along with Mr. Jai Sahai Endlaw, Mr. Karan Khanna, Mr. Himanshu Satija and Ms. Divya Narayanan, Advocates.

versus

1. MITON CREDENTIALIA TRUSTEESHIP SERVICES LIMITED
.....Defendant No.1
2. LGOF GLOBAL OPPORTUNITIES LIMITED
....Defendant No. 2
3. CONNECOR INVESTMENT ENTERPRISES LIMITED
C/o Amicorp (Mauritius) LimitedDefendant No.3
4. M/s. AAKASH NIRMAN UDYOG PRIVATE LIMITED
.....Defendant No. 4
5. M/s. MAGNIFICENT OVERSEAS PRIVATE LIMITED
....Defendant No. 5



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6. M/s. MANGLAM DEVELOPERS PRIVATE LIMITED
....Defendant No. 6
7. M/s. P.P. JEWELLERS PVT. LTD.Defendant No. 7
8. Mr. KAMAL GUPTA ...Defendant No. 8
9. Mrs. VEENA GUPTA ...Defendant No. 9
10. Mr. MOHIT GUPTA ...Defendant No. 10
11. Mr. MUKESH GUPTADefendant No. 11
12. Mrs. ANSHU GUPTADefendant No. 12
13. Mr. SANDEEP GUPTADefendant No. 13

Through: Mr. Siddhartha Yadav, Senior Advocate along with Mr. NPS Chawla, Mr. Sujoy Datta, Mr. Suresh Kant Baxy, Mr. Vibhor Kapoor, Ms. Kinjal Goyal and Mr. Shubham Raghuwanshi, Advocates for D1 to D3.
Ms. Meenakshi Arora, Senior Advocate with Mr. Gaurav H Sethi, Mr. Abhinav Tyagi, Mr. Rahul Pawar, Advocates for D8-D13.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Commercial Suit for Declaration and Injunction



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under Section 34 of the *Special Relief Act, 1963* read with Section 151 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed on behalf of the Plaintiff seeking a declaration that the security/mortgage created by Defendant Nos. 4, 5 and 6 under Debenture Trust Deed dated 30.03.2022 and three Memorandums dated 19.04.2022 for recording Entry of Equitable Mortgage by deposit of Title Deeds, in so far as Karol Bagh property is concerned, be declared as null and void; and that Defendant Nos.1 to 3 may be restrained from pursuing or acting in furtherance of Debenture Trust Deed dated 30.03.2022 executed by Defendant No.4 and the Memorandums dated 19.04.2022 executed by Defendant No.4, 5 & 6 in so far as the Karol Bagh properties are concerned; and further to direct the Defendant Nos.1 to 3 to deliver the original Title Deeds of Karol Bagh property qua the shareholding of Defendant Nos.4, 5 & 6.

2. As per the averments made in the Plaint, Plaintiffs and Defendant Nos.8 to 13 are the family members. Defendant No.7 is a Corporate entity incorporated under the *Companies Act, 1956*. Plaintiff No.1, Pawan Gupta is one of the promoter Director of Defendant No.7. He along with other family members, own/control 26.40% shareholding of the Defendant No.7.

3. Defendant Nos.4 to 6 are subsidiary Companies of Defendant No.7 which is holding 99.90% shares in each of the aforesaid Companies. Defendant Nos.4 to 6 each own separate



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immovable properties described as Khasra No.199 (admeasuring 267 sq. yards); Khasra No.200 (admeasuring 267 sq. yards) and Khasra No.201 (admeasuring 267 sq. yards) located at Naiwalan, Karol Bagh, New Delhi of which there is a built up structure commonly known as 2700 Desh Bandu Gupta Road, Karol Bagh, New Delhi (*hereinafter* referred to as '*Karol Bagh property*').

4. The Plaintiff No.1 Pawan Gupta is presently running business of *M/s P.P.Jewellers Retail Pvt. Ltd.* which is dealing in sale and purchase of gold and diamond jewellery.

5. Though Karol Bagh property is owned by Defendant Nos.4 to 6 but the Plaintiff have been claiming their right, title and interest in the said property by virtue of Family Settlement entered *inter-se* the family members on 30.09.2014, 20.06.2015 and 09.07.2019 wherein the Karol Bagh property has come to the share of the Plaintiffs.

6. The Plaintiffs assert that they have been in continuous legal possession of the Karol Bagh showroom since 01.10.2024. The Plaintiff No.1 pending the complete execution of Family Settlement, continues to be the Director and shareholding of Defendant No.7 though because of the Settlement he has distanced himself from the control and management of Defendant No.7 and has not signed or verified Books of Accounts and other documents, on behalf of Defendant No.7.

7. The disputes have arisen between the Plaintiffs and



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Defendant No.4 to 12 in regard to the Family Settlement in respect of the family owned entities which are pending before the learned Sole Arbitrator. There are several other legal proceedings pending in various forums.

8. On account of ongoing family disputes, the Plaintiff No.1 had filed a Petition being OMP (I)(COMM) No.186/2022 under Section 9 of the *Arbitration and Conciliation Act, 1996* ('Arbitration Act' *hereinafter*) seeking ad interim relief *qua* the entities falling in his share under the Family Settlement, especially the Karol Bagh property.

9. The Petition was allowed on 05.07.2022 by this Court whereby Defendant Nos.4 to 12 were restrained from selling, alienating, transferring or creating 3rd party right or interest in the immovable properties which have fallen in the share of Plaintiff No.1 in terms of the Family Settlement. Defendant Nos.4 to 12 were also directed not to cause obstruction/impediments in the utilization of the Karol Bagh property by Plaintiff No.1.

10. Subsequently, this Court *vide* Order dated 16.04.2024 appointed learned Sole Arbitrator who directed the parties not to deal with the subject-properties until a decision was taken on the pending Applications under Section 17 of the Arbitration Act.

11. Defendant Nos.4 to 12 filed their Reply dated 30.06.2024 to the Application under Section 17 of the Arbitration and Conciliation Act, 1996 where they revealed for the first time that



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the charge has been created on the Karol Bagh property even prior to the passing of the Order dated 05.07.2022 in the Section 9 Petition i.e. OMP (I) (COMM) No. 186/2022. The malicious design of the Defendants in purportedly creating a charge on the Karol Bagh property and not disclosing the same, is evident from the fact that no details whatsoever were provided as to the nature of the charge or any documentary proof thereof.

12. The Plaintiffs then inspected the records maintained on the portal of the Ministry of Corporate Affairs, Government of India and discovered that the charge was shown to be registered on 06.06.2022 i.e. three days after the Judgment was reserved in the Petition under Section 9 of the Act, 1996.

13. The Plaintiffs immediately moved an Application seeking discovery of all the documents in relation to the aforesaid transactions. They also sought a direction to unencumber the Karol Bagh property with ancillary reliefs, by way of a separate Application under Section 17 of the Arbitration Act which is pending before the learned Arbitrator.

14. On 27.06.2024, the learned Arbitrator noted that the failure to bring this fact to the notice of the Court or the learned Arbitrator in the earlier hearings held on 16.04.2024, amounted to deliberate concealment on the part of the Defendants. The Defendants filed their Replies on 15.07.2024 and also filed the Notice of Debenture Trust Deed dated 30.03.2022 and separate Memorandum dated



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19.04.2022 executed by Defendant Nos.4, 5 & 6 respectively.

15. The learned Arbitrator attempted to resolve the disputes pertaining to encumbrances created with regard to the Karol Bagh property and recorded a consensus arrived at during the hearing on 25.07.2024 and the parties were required to report on the implementation on 08.08.2024.

16. However, this process got impeded because of the subsequent developments i.e Mr. Rahul Gupta son of Defendant No.8, filed the Applications before this Court. The matter was last taken up by the learned Arbitrator on 06.11.2024 and the matter has not proceeded thereafter.

17. In furtherance of the directions of the learned Arbitrator, Plaintiff No.1 approached Defendant Nos.1 to 3 *vide* Letter dated 07.10.2024 detailing the true facts in regard to the ownership and management of the family companies including Defendant Nos.4 to 7, details and status of the Showroom provided as security, Family Settlement, disputes, litigation history, etc.

18. The Plaintiff has claimed that in the interregnum Defendant Nos.2 & 3 have exercised a “Put Option” in the Debenture Trust Deed dated 30.03.2022 *vide* Notice dated 08.10.2024, calling upon Defendant No.4 to repay the monies due along with interest within 60 days of issuance of the said Notice.

19. The Plaintiff claim that Defendants have attempted to defeat the rights of the Plaintiffs in Karol Bagh property by creating a



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charge over the same and failing to disclose about it to the Court or the learned Arbitrator and by failing to provide the complete details and particulars thereof. The shares held by the holding Company, Defendant No.7 have also been pledged. Therefore, by way of the present suit the Plaintiffs have sought the decree of Declaration for declaring the Debenture Trust Deed and Memorandums as null and void and other ancillary reliefs.

20. The Suit was filed before the Roster bench on 24.12.2024. Vide Order dated 24.12.2024, Notice of Application under Section 12A of the *Commercial Courts Act, 2015* has been issued to the Defendants. Mr. Siddharth Yadav, Senior Advocate on behalf of Defendant Nos.1 to 3 accepted Notice and sought time to file the Reply. The matter has now come up before the Vacation Bench.

21. The learned senior Advocate, Mr. Arvind Nayar on behalf of the Plaintiffs, has vehemently contended that there is an urgent need of an Injunction to protect the Karol Bagh property which, as per the Family Settlement, has come to the share of the Plaintiffs. It is contended that without disclosing, a charge has been created by Defendant No.4, 5 & 6 (who are the owners of the Karol Bagh property) in favour of Defendant No.1 and the said charges have been secured by Defendant No.7 of whom Defendant Nos.4, 5 & 6 are the subsidiaries. It is asserted that unless the Subject Properties are protected, the *bona fide* claims of the Plaintiffs under the Family Settlement would be defeated.



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22. *Learned Senior Advocate, Mr. Siddharth Yadav* on behalf of Defendant Nos.1 to 3, has vehemently opposed the maintainability of the Suit itself on the ground that the entire dispute in regard to the Family Settlement *inter-se* the Plaintiffs and Defendant Nos.4 to 12 are pending before the learned Arbitrator.

23. *In the first Procedural Order dated 16.04.2024*, the learned Arbitrator has already directed the parties not to deal with the subject properties in any manner without first seeking liberty from the Tribunal. Therefore, the properties already stand protected and the present suit for seeking protection, is not tenable.

24. Learned senior Advocate has further argued that there is an Application under Section 12A of the *Commercial Courts Act, 2015* seeking exemption from Pre-Institution Mediation pending, till such time the said Application is decided, the Suit itself cannot be registered and entertained.

25. The learned Senior Advocate has further contended that the Plaintiffs i.e. the Pawan Gupta and Mrs. Renu Gupta are basing the claim on the Family Settlement; however, admittedly in terms of the Arbitration Clause contained in the Family Settlement, the learned Sole Arbitrator is already seized of the entire dispute and the suit in respect of the said properties, cannot be held to be maintainable under Section 8 of the Arbitration Act.

26. Furthermore, the alleged transactions have been undertaken by the Companies i.e. Defendant Nos. 4 to 7. The Plaintiffs at best



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are shareholders to the extent of 26.4% in Defendant No.7 only. Being the shareholders, in case they felt that there was mismanagement of the affairs of the Company, they could have approached the NCLT under *Sections 241 to 246 of the Companies Act, 2013*. Whichever way the case may be considered, the Application seeking Interim Relief is already pending before the learned Arbitrator under Section 17 of the Act, 1996. The present Suit itself is not maintainable and, therefore, no question of granting any interim stay arises.

27. In the end, it is argued that as per the Plaintiffs themselves the cause of action arose when the Debenture Trust and the Memorandums dated 19.04.2022 were executed by Defendant Nos.4, 5 & 6 duly guaranteed by Defendant No.7. The “Put Option Notice” dated 08.10.2024 had been issued wherein 60 days time was given to Defendant No.4 to repay the monies alongwith the interest. However, the Suit has been filed only on 24.12.2024. The cause of action arose firstly, in the year 2022 and eventually in October, 2022 but no steps whatsoever have been taken by the Plaintiff which clearly reflects that there is no urgency for exempting the Plaintiff from first availing the pre-litigation mediation. It is thus, submitted that when there are various questions raised in regard to the maintainability of the Suit itself, no interim relief can be granted.

28. **Learned Senior Advocate, Mr. Arvind Nayar in his**



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Rejoinder has contended that the alternate remedy of Section 17 to seek Interim Protection in the arbitration proceedings is not available for the simple reason that Defendant Nos.1 to 3 are not a party to the Family Settlement and therefore, are not amenable to the arbitration proceedings. The learned Arbitrator, therefore, cannot grant a relief *vis-a-vis* Defendant Nos.1 to 3.

29. Submissions Heard and record perused.

30. *Firstly*, the Application under Section 12A of the Commercial Courts Act is yet to be adjudicated. The cause of action as narrated in the Suit itself reflects that there is no immediate urgency. *Secondly*, the issue of maintainability of the Suit by the Plaintiffs to question the acts of the Companies, which can be done under the provisions of the Companies Act before NCLT, have also been raised.

31. Without referring to other Objections it is significant to observe that even though Defendant Nos.1 to 3 may not be a party to the Family Settlement but because the Subject properties are subject-matter of adjudication to which Defendant Nos.4 to 7 are a party, there is no bar to avail the remedy under Section 9 of the *Arbitration and Conciliation Act, 1996* even against Defendant Nos.1 to 3 as has been held in the case of *Blue Coast Infrastructure Development P. Ltd vs. Blue Coast Hotels Ltd and Anr.* AIR Online 2020 Del. 862.

32. For the aforesaid reasons, no ad interim injunction is made



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out at this stage.

33. List before the Roster Bench on 07.01.2025.

**NEENA BANSAL KRISHNA
(VACATION JUDGE)**

DECEMBER 27, 2024/rk