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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 995 OF 2021 (GM-RES)

BETWEEN

1. MR. GAURAV K BHANDARI
SON OF SHRI U C BHANDARI
AGED ABOUT 40 YEARS
2. MR BHARAT K BHANDARI
SON OF SHRI U C BHANDARI
AGED ABOUT 42 YEARS
3. MRS ASHU BHANDARI
WIFE OF SHRI U C
BHANDARI
AGED ABOUT 67 YEARS

ALL ARE RESIDING AT
NO.266, 15TH MAIN ROAD
5TH CROSS
RMV EXTENSION
BANGALORE-560 080



...PETITIONERS

(BY SMT. SANJANA M., ADVOCATE FOR
SRI. PRADEED NAYAK., ADVOCATE)

AND

1. MR. BHARATH CHANDRASHEKHAR
SON OF LATE MR G CHANDRASHEKHAR
2. MS BINDUSHREE C
DAUGHTER OF LATE MR G
CHANDRASHEKHAR
3. MRS DEEPA C



WIFE OF LATE MR G CHANDRASHEKAR

ALL ARERESIDING AT NO.538
31ST MAIN, 1ST CROSS
BANAGIRINAGAR
BSK III STAGE
BANGALORE-560 085

...RESPONDENTS

(BY SRI. P.D. SURANA., ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT QUASHING THE ORDER DATED 12.01.2021 ON INTERLOCUTORY APPLICATION I.A NO.1 PASSED BY THE HON'BLE COMMERCIAL COURT AT BANGALORE IN COM.A.A.NO. 10 OF 2021 ("IMPUGNED ORDER") (ANNEXURE-A) AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 27.11.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioners are before this Court seeking for the following reliefs:

- a. *To issue a writ, order or direction in the nature of certiorari or any other writ quashing the order dated 12.01.2021 on interlocutory application I.A.No.1 passed by the Hon'ble Commercial Court at Bangalore in Com.A.A. No.10 of 2021 ("Impugned Order") (Annexure-A);*
- b. *Grant an order of temporary injunction in terms of I.A.No.1 filed in Com.A.A.No.10 of 2021 restraining the Respondents, their agents, employees, or other persons claiming through or under them, from, in*



any manner, encumbering, selling, alienating, disposing of, or creating any third party rights over the Petition Schedule Properties pending disposal of the proceedings in Com.A.A.No.10 of 2021 and;

c. Pass any other orders deemed fit, in the facts and circumstances of the case, in the interests of justice.

2. The petitioners are stated to be partners in a Firm, engaged in the Real estate business. There being certain disputes between the petitioner and the respondents under the Partnership deed/dissolution of partnership, the petitioners filed a proceeding under section 9 of the Arbitration and Conciliation Act, 1996 ['A&C Act' for short] for appointment of a receiver to preserve and manage the firm's assets and also restraining the respondents from in any manner of alienating, encumbering or creating third party rights over the schedule properties they acquired. A caveat having been filed, in the original suit jurisdiction, the Commercial Court took up the caveat and indicated that no order could be passed unless the caveator was served. It is challenging the



same the petitioner had approached this court in the above writ petition.

3. During the pendency of the above matter, the Section 9 proceedings have been disposed off, extending the interim order by 30 days.
4. The submission of Sri.Pradeep Nayak, learned counsel appearing for the petitioner is that the Commercial Court ought not to have imposed the said time limit of 30 days but ought to have extended the interim order until the constitution of the Arbitral Tribunal to enable the petitioners to approach the Tribunal for appropriate relief.
5. The petitioners having issued a notice invoking the arbitration clause and nominating its arbitrator, neither consent nor a reply was issued by the respondents requiring the petitioners to file proceedings under Section 11 of the A&C Act which finally came to be allowed on 11.11.2024 and it is in



pursuance thereof, that the Arbitral Tribunal is being now constituted, thus, the restriction of 30 days imposed on 25.03.2024 while disposing A.A. No. 10/2021 is without any basis and submits that the interim order which is granted is required to be extended.

6. Initially the submission of Sri.P.D.Surana, learned counsel appearing for the respondent was that the Commercial O.S. having been disposed, the above petition would not survive for consideration. This submission was made even before the order dated 11.11.2024 appointing an arbitrator was passed. Subsequently Sri.P.D.Surana retired from the matter and Sri.P.N.Rajeshwara, learned counsel entered appearance for the respondents.

7. Similar is the submission made by Sri.P.N.Rajeshwara, learned counsel that the above writ petition arising out of the non-grant of injunction in a Section 9 proceedings, the said Section 9



proceedings having been disposed, the above writ petition would not survive for consideration.

8. Heard Sri.Pradeep Nayak, learned counsel for the petitioner and P.N.Rajeshwara, learned counsel for respondents. Perused papers.

9. The points that would arise for consideration are;

1. Whether a caveat petition filed in the original suit jurisdiction can be taken into consideration in a Commercial Suit?

2. Whether a court seized of Section 9 proceedings can impose a time period during which the interim order granted would be in force or not?

3. What Order?

10. I answer above points as under:

11. Answer to point No.1: Whether a caveat petition filed in the original suit jurisdiction can be taken into consideration in a Commercial Suit?

11.1. Section 148-A of the Code of Civil Procedure

is reproduced hereunder for easy reference:

148-A. Right to lodge a caveat:

(1)Where an application is expected to be made, or has been made, in a suit or proceeding



instituted, or about to be instituted, in a Court , any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveators expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.]

11.2. A caveat is filed where an application is expected to be made or has been made in a suit or a proceeding instituted or about to be instituted in a Court and when caveat has been lodged, the person who has lodged a caveat shall serve a notice of caveat by



registered post on the person against to whom the caveat has been filed and on any application filed in a suit or proceeding, the Court shall direct service of a notice of the application on the caveator.

11.3. Section 148-A was introduced by Amendment in the year 1977 providing the valuable right to a caveator to be issued notice before any interlocutory order is passed. Section 148-A does not make any distinction between the nature of proceeding but only indicates that the caveat can be filed when any application is expected to be made or has been made in a suit or proceedings instituted or about to be instituted.



11.4. Thus, in my considered opinion it is not even required to be stated in the caveat petition as to in what jurisdiction the caveat petition is filed. What is required to be only stated is the name of the caveator and against whom the caveat has been filed.

11.5. The substantial provision viz., Section 148-A not making any distinction between the nature of proceedings or classification of the proceedings, the petitioner cannot in the present matter contend that caveat was filed in the original jurisdiction and could not have been put up in respect of the Commercial Suit.

11.6. Thus, I answer point No.1 by holding that when a caveat is filed so long as the name of the caveator and caveated (i.e., against



whom it is filed) match the said caveat is required to be put up in the suit/application/proceedings, irrespective of the classification, if any, shown in the caveat.

12. Answer to point No.2: Whether a court seized of Section 9 proceedings can impose a time period during which the interim order granted would be in force or not?

12.1. Normally Courts would not interfere in arbitral proceedings, however there are certain interlocutory proceedings which are required to be considered by the courts prior to the commencement of arbitration and post the award being passed.

12.2. Insofar as prior to the commencement of arbitration is concerned, they are generally two fold, one is the proceeding under Section 11 of the A&C Act for the appointment of an arbitrator if an arbitrator cannot be appointed



by consent or there being no institutional mechanism provided for such appointment, the other being under Section 9 of the A&C Act for interlocutory reliefs pending the constitution of the Arbitral Tribunal. Of course post the award having been passed, the same could be challenged before the courts of law under Section 34 as also interlocutory reliefs could be sought for post the award under section 9.

12.3. During the pendency of arbitral proceedings there are certain provisions which would enable a party to approach the Court, for example recording of evidence, etc.

12.4. As aforementioned Section 11 proceedings are filed for appointment of an arbitrator and Section 9 proceedings are generally filed for interlocutory reliefs in order to preserve the subject matter of the arbitration pending the initiation and culmination of the arbitral



proceedings. This being so, for the reason that a party to an arbitration agreement cannot approach a Court of law vide a Civil Suit seeking for any reliefs other than that provided under the A&C Act.

12.5. Interlocutory orders could be passed ad-interim or interim since the very proceedings under Section 9 are interim proceedings inasmuch as after an interim order is passed, there is nothing which survives under Section 9 proceedings for consideration.

12.6. Thus, on a Section 9 proceeding being filed, the Court could grant the interlocutory relief at the *ex parte* stage, that is ad-interim relief or after hearing the parties which would be interim relief pending arbitral proceedings. If interlocutory relief has been granted at the *ex parte* stage, the same could be set aside, confirmed or varied after hearing the parties.



This order in effect puts and end to the Section 9 proceedings.

12.7. In the present matter Interim orders having been passed, subsequently the proceedings under Section 9 of the A&C Act in A.A.No.10 of 2021 came to be disposed by vide order dated 25.3.2024 extending the interim order granted for a period of 30 days. It is after the disposal of the said A.A.No.10/2021 that the above matter is taken up for consideration.

12.8. In the present case, initially when Section 9 proceedings were filed, no *exparte* orders were passed since there was a caveat filed and at that stage, the petitioner had approached this Court where ad-interim reliefs were granted. Subsequently, the matter was considered by the Section 9 Court and the injunction order was extended by a period of one month from



the date of the order disposing the Section 9 proceedings.

12.9. Though there is no specific prayer made in relation there to, but taking into consideration the dispute between the parties holistically, the Section 9 proceedings having been disposed, on which basis the respondents contended that the above writ petition could also be disposed.

12.10. Having seen that there would be injustice caused to the petitioners if the above petition were to be disposed simpliciter, the matter was taken up for arguments on the above points formulated.

12.11. If the submission of the counsel for respondent were to be accepted, then even though the respondents were either opposing the appointment of an arbitrator or not taking any steps to appoint an arbitrator, the net effect



would be that an arbitrator would not be appointed, the Arbitral Tribunal would not be constituted and that the interlocutory order passed by the Section 9 court would stand vacated after expiry of 30 days even before the Arbitral Tribunal were to be constituted requiring the petitioner to once again approach the Section 9 court for extension of the interim relief already granted and or by filing a fresh application under Section 9.

12.12. This in my considered opinion would only lead to multiplicity of proceedings which could have been well avoided by the Section 9 Court by directing that the interlocutory order would be in force until the constitution of the Arbitral Tribunal or a period of 30 days after the constitution of the arbitral Tribunal. Reserving liberty to the petitioner to approach the tribunal for interim relief by way of interlocutory orders



in terms of Section 17 of the A&C Act 1996, which would result in the interlocutory orders continuing in force till the Tribunal is constituted and thereafter for the Tribunal to consider the matter on its merits and pass necessary orders.

12.13. The imposition of an artificial 30 day period or the like, be it either 60 or 90 days without the Arbitral Tribunal being constituted, in my considered opinion, would not be in the interest of justice, both substantive and procedural.

12.14. The court seized of Section 9 proceeding would be well advised to consider this aspect while passing orders while disposing off a Section 9 application and while doing so, the conduct of the parties in initiating and or proceeding with the arbitral proceedings could also be looked into.



12.15.I answer point no.2 by holding that though a time limit for operation of the interlocutory order could be fixed by the Section 9 Court, the time fixed has to be so fixed to achieve the purpose of a section 9 proceedings and not be fixed in a manner as to negate the purport and intent of Section 9 of the A&C Act. The operation of the interim order ought to be extended until a period of atleast 30 days after the constitution of the Arbitral Tribunal or till the culmination or the Arbitral Proceedings.

13. **ANSWER TO POINT NO.3: What Order?**

13.1.In that view of the matter, Arbitrator having been appointed thus constituting the Arbitral Tribunal, the reliefs sought for are moulded and I pass the following:

ORDER

- i. The writ petition is ***partly allowed***.



- ii. The interim order dated 12.01.2021 granted in Com. A.A. No. 10/2021 passed by LXXXII ACCJ, Bengaluru, is extended upto 30.01.2025 to enable the petitioners to approach the Arbitral Tribunal for such interlocutory relief as the petitioners were to apply for.
- iii. It will be for the Arbitral Tribunal to consider the application on merits without being influenced by the orders passed in A.A. No.10/2021 or in the present matter.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

LN/-
List No.: 1 Sl No.: 44