

(2011) 03 MAD CK 0195

In the Madras High Court

Case No : O.S.A. No's. 25 and 26 of 2011

Mr. V. Sekar and Yercaud Coffee Curing Works Limited and
Mr. S. Krishnan

APPELLANT

Vs

Akash Housing

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 9

Citation : (2011) 3 ARBLR 327 : (2011) 8 RCR(Civil) 2162

Hon'ble Judges : R. Banumathi, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : K.M. Vijayan for K.M. Vijayan, Associates, for the Appellant; V.C. Janarthanan, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—These two appeals arise out of the order dated 3.12.2010 made in O.A. Nos. 40 and 41 of 2010 on the file of this

Court, whereby the learned single Judge has allowed application "" O.A. No. 40 of 2010 filed u/s 9 of Arbitration and Conciliation Act, 1996 and

also the other application "" O.A. No. 41 of 2010 granting interim injunction restraining the Appellants from in any manner alienating, encumbering

or otherwise dealing with the schedule properties situated at Kondappanaickenpatti village, Salem Taluk.

2. The brief facts are that the Appellants are the owners of the lands measuring 4.62 acres (S. Nos. 175/3B, 177/1, 178, 180/2A); 12.44 acres

(S. Nos. 177/3, 179, 180/8) and 1.26 acres of land (S. Nos. 177/2, 180/7) situated in Kondappanaickenpatti village, Salem Taluk. The

Appellants and Respondent "" Akash Housing represented by its Partner Suresh

Kumar entered into a joint development agreement dated 17.5.2006 under which the Respondent undertook development activities such as levelling/filling/clearing/cutting of trees and erection of compound wall in the lands measuring 18.32 acres. The Managing Director of M/s. Vijay Shanthi Builders represented by its Managing Director had entered into an independent and separate agreement dated 17.5.2006 with the Appellants and the said Company has undertaken to develop the integrated township/gated community by forming a lay out and constructing row houses for the purpose of sale of houses to third parties. In both the agreements, parties are stated to have agreed to share the profits in the ratio of 65:35.

3. Certain modifications to the joint development were considered necessary, which culminated in the execution of supplementary agreement on 11.6.2008. Total consideration for the works to be done by the Respondent/Akash Housing was earlier fixed at Rs. 25,00,000/- per acre and by the said supplementary agreement, the same was modified. The case of Respondent is that in terms of Clause 5 of the supplementary agreement dated 11.6.2008, the Appellants shall pay the entire consideration of Rs. 4,91,17,500/- within 24 months from the date of supplementary agreement. There arose certain disputes and difference of opinion between the parties and the parties resorted to resolve their disputes through conciliation and a Memorandum of Understanding (MOU) came to be entered into between the Appellants and the Respondents in the presence of Senior Counsel Mr. K.M. Vijayan on 22.8.2009.

4. Case of Respondent is that in pursuance of the said MOU dated 22.8.2009 they proceeded to undertake the work in the schedule mentioned property. On 5.1.2010 the Respondent came to know that the Appellants have cancelled the power of attorney executed by them on 13.10.2009 in favour of Vijay Shanthi Builders and that the Appellants are attempting to sell the properties directly to third parties to get rid off the obligations to pay the amount of a sum of Rs. 5 Crores owned by them under the supplementary agreement dated 11.6.2008. As per the development agreement dated 17.5.2006, in the event of any disagreement between the parties, the same shall be settled by arbitration as per the Arbitration and Conciliation Act, 1996. Alleging that the Appellants are taking steps to

alienate the property in favour of the third parties and that the

Respondent is contemplating arbitration proceedings, the Respondent had filed Petition u/s 9 of the Arbitration and Conciliation Act, 1996,

(hereinafter referred to as "1996 Act"). In the said petition, the Respondent had sought for injunction restraining the Appellants from alienating the property.

5. The Appellants have filed counter stating that the Respondent having filed application u/s 9 of the 1996 Act, M/s. Vijay Shanthi Builders has

also filed Civil Suit in C.S. No. 36 of 2010 on the very same cause of action. It is averred that the Appellants had already sent communications to

invoke arbitration and conciliation proceedings and without even replying to the same the Respondent had filed the application u/s 9 of the 1996

Act. The Appellants further averred that the Respondent had not invoked the arbitration clause and therefore the benefit of Section 9 of the 1996

Act should not be allowed to go to the Respondent for obtaining interim orders. The Appellants further averred that the Respondent did not

commence the development work nearly for three years even after the time schedule and the third party purchasers with the Appellants have

started demanding the return of advance money and the Appellants, being land owners and very reputed persons in Salem District, are put to lot of

embarrassment with third party agreement holders. According to the Appellants, only due to the failure on the part of Vijay Shanthi Builders to

commence the work, the power of attorney was cancelled on 5.1.2010. According to the Appellants, the Respondent split the work into two

agreements only for record sake and income tax and other purposes. The crux of the two agreements is 65:35 ratio between the Respondent and

the Appellants and no separate consideration for any development was separately agreed. Without invoking the arbitration clause, the Respondent

is not entitled to the interim injunction.

6. The learned single Judge held that in pursuance to the joint development agreement and subsequent agreement entered into between the parties

and also in terms of MOU dated 22.8.2009, the Respondent had put up compound wall and levelled the ground for the purpose of putting up

construction. Placing reliance upon Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., , the learned single Judge

held that the Chartered High Courts including the Madras High Court could entertain the arbitral proceedings in the High Court, provided a part of cause of action has arisen within the territorial jurisdiction of the Court. Observing that non-appointment of arbitrator itself is not sufficient to refuse the relief and pointing out that there is likelihood of Appellants entering into the alienated properties or entering into joint development agreement with third parties, the learned single Judge allowed O.A. Nos. 40 and 41 of 2010 and granted injunction. The learned single Judge dismissed the application "" A. No. 134 of 2010 for appointment of Commissioner. However, the learned single Judge directed the Respondent to initiate arbitration proceedings within one month from the date of the order. Challenging the said order, the present appeals are filed.

7. Challenging the impugned orders, Mr. K.M. Vijayan, learned Senior Counsel appearing for the Appellants interalia made the following submissions:

The joint development agreement and supplementary agreement relates to immovable properties situated in Kondappanaickenpatti village, Salem

District. Since the dispute relates to immovable properties, Madras High Court is not the principal civil Court of Original Jurisdiction and petition

filed u/s 9 is not maintainable in the Original Side of Madras High Court.

There is no manifest intention on the part of the Respondent to have recourse to arbitration proceedings.

Respondent has initiated two parallel proceedings by filing suit for specific performance in C.S. No. 36 of 2010 and simultaneously filing the

application u/s 9 of the 1996 Act and the Respondent represented by its Partner Suresh Kumar is pursuing two parallel proceedings and grant of

interim injunction would frustrate the very arbitration.

8. Countering the argument, the learned Counsel for the Respondent Mr. V.C. Janarthanan interalia made the following submissions:

Even though the immovable properties are situated in Kondappanaickenpatti village, Salem District, u/s 2(1)(e) of the 1996 Act, principal civil

Court of original jurisdiction is High Court, Madras. Suit for land has got nothing to do with Section 9 of the Arbitration Act, the amount payable

to the Respondent is quantifiable and therefore de hors the suit filed by Vijay Santhi Builders, application filed u/s 9 is maintainable.

9. The Appellants are the land owners in S. Nos. 175/3B, 177/1, 178, 180/2A, 177/3, 179, 180/8, 177/2 and 180/7 situated in

Kondappanaickenpatti village, Salem Taluk. The Respondent "" Akash Housing represented by its Partner Mr. Suresh Kumar entered into a

development agreement on 17.5.2006 under which the Respondent agreed to carry out the developmental activities such as

levelling/filling/clearing/cutting of trees and construction of compound wall in the above said immovable property. On the same day i.e., 17.5.2006,

M/s. Vijay Shanthi Builders represented by its Managing Director entered into a joint development agreement under which M/s. Vijay Shanthi

Builders agreed to develop the properties "" prepare layout plans, plan for construction, co-ordinate with the various agencies for the purposes of

obtaining necessary permits for constructing villas/bungalows that are to be constructed over the property. In both the agreements, sharing of profit

between the Appellants and the Respondent from out of the property was agreed to be shared at the ratio of 65:35 basis. In both the development

agreements, the parties agreed that "in the event of any disagreement/dispute between the parties, the same shall be resolved through arbitration in

terms of Arbitration and Conciliation Act, 1996, the venue of arbitration being Chennai. By the supplementary agreement dated 11.6.2008, the

terms of agreement were modified. As per the terms of the supplementary agreement, the Appellants has to pay a sum of Rs. 4,91,17,500/-

towards clearing of trees, bushes and constructing compound wall covering the land. Subsequently there was a MOU entered between the parties

dated 22.8.2009. There was also exchange of E-Mails between the parties.

10. Re. Contention "" Jurisdiction of Original Side of High Court, Madras:

Contending that the joint development agreement pertains to the dispute in respect of immovable property, learned Senior Counsel Mr. K.M.

Vijayan contended that the single Judge erred in rejecting the contention of the Appellants that Original Side of High Court, Madras had no

jurisdiction to entertain a petition u/s 9. The learned Senior Counsel inter alia made the following submissions:

Madras High Court had no jurisdiction to entertain an application to enforce a contract of sale of immovable property wholly outside the

jurisdiction and therefore it cannot also entertain any petition u/s 9 of the

Arbitration Act, where it deals with immovable properties situated outside the original jurisdiction of the High Court.

Jurisdiction u/s 2(1)(e) of the Arbitration Act depend upon a place, where the parties reside, dwell or carry on business, but has jurisdiction to

decide the question where the subject matter of the dispute is situated. Section 2(1)(e) speaks about the ""principal civil Court of Original

Jurisdiction"" forming subject matter of the arbitration only if the same had been subject matter of the suit.

The learned single judge ought to have appreciated that for a Court to exercise jurisdiction u/s 9 of the Act, ""the Court"" must be a ""Court"" as

defined u/s 2(1)(e) of the Act and where the cause of action has arisen.

11. Contending that the parties have agreed that the venue of arbitration shall be in Chennai, the learned Counsel for Respondent Mr. V.C.

Janarthanan submitted that the dispute raised by both parties emanates from the development agreement dated 17.5.2006, supplementary

agreement dated 11.6.2008 and also MOU dated 22.8.2009, which were executed in Chennai and therefore Original Side of the Madras High

Court has jurisdiction to entertain petition u/s 9. In support of his contention, the learned Counsel placed reliance upon Jindal Vijayanagar Steel

(JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., and Dynasty Developers Private Limited Vs. Jumbo World Holdings Limited, A

company incorporated and existing in accordance with the laws of British Virgin Islands, Dandvati Investments and Trading Company Pvt. Ltd., A

Company incorporated and existing in accordance with the laws of India, Jerom Trading and Investment Limited, A company incorporated and

existing in accordance with the laws of India and Gordon Woodroffe Limited, Now known as GWL Properties Limited, A Company

incorporated and existing in accordance with the laws of India, . Learned Counsel further contended that Respondent "" Akash Housing has

independent claim quantified as claim Rs. 4,91,17,500/- in the supplemental agreement and therefore the dispute cannot be said to be pertaining to

the immovable properties.

12. We have carefully considered the rival contentions. Arbitration Agreement is required to be filed in a Court having jurisdiction. ""Court"" has

been defined in the Arbitration Act, 1996 u/s 2(1)(e), which reads as follows:

(e) "Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil

jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a

suit, but does not include any civil court of a grade inferior to such principal civil Court, or any Court of Small Causes.

On a plain reading of the definition of "court" u/s 2(1)(e) of the 1996 Act, it is evident that the arbitration petition can be filed before:

(i) A Principal Civil Court of original jurisdiction in district;

(ii) A High Court in exercise of its original civil jurisdiction" having jurisdiction to decide the questions forming the subject-matter of the arbitration if

the same had been the subject-matter of a suit.

13. Section 2(1)(e) of Arbitration Act, 1996 expressly recognises that not only District Courts, but also the High Courts exercising original civil

jurisdiction would have jurisdiction under 1996 Act. The Act thus recognises that the Chartered High Courts exercising original civil jurisdiction

would exercise the jurisdiction. While considering the question of jurisdiction, we are concerned with the original jurisdiction of the Madras High

Court, which is a Chartered High Court. The High Court gets its original jurisdiction by virtue of Clause 12 of "Letters patent", which reads as

under:

Original jurisdictions as to suits."And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil

jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable

property, such land or property shall be situated, or in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of

the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the Defendant

at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said

High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or

damage, or value of the property sued for does not exceed hundred rupees.

14. On behalf of the Appellants, placing reliance upon judgment of a learned

single judge - Kirloskar Construction And Engineer Ltd. v. Fast

Track Associates 2009 (5) Ctc 97, the learned Senior Counsel Mr. K.M. Vijayan submitted that merely because the parties agreed to have

arbitration at Chennai cannot confer jurisdiction of Madras High Court u/s 9 unless the dispute involved in contract, which is the subject matter of

arbitration, can be decided by way of a suit within the jurisdiction of that Court. The contention of the Appellants is that since the dispute pertains

to immovable properties, u/s 2(1)(e), the Madras High Court would not have the jurisdiction to decide the question under arbitration agreement.

The learned Counsel would contend that Clause 12 of Letters Patent makes a clear distinction between immovable properties and other disputes.

According to the Appellants, since the entire agreement relates to land and since Section 2(1)(e) stipulates ""principal civil Court of original

jurisdiction"", the Court must have jurisdiction to decide the question as a subject matter of suit and the original side of Madras High Court cannot

entertain petition u/s 9 of the Act pertaining to the immovable properties situated in Salem District.

15. In Kirloskar Construction and Engineer Ltd. v. Fast Track Associates 2009 (5) CTC 97, the subject matter of arbitration agreement was

relating to laying of road in Haryana and Uttar Pradesh and the contract was signed at Panipet by parties. Parties conferred jurisdiction to Courts

at Delhi, though no part of cause of action had arisen at Delhi. Parties also agreed that place of arbitration to be at Chennai. Considering the

question whether Madras High Court has jurisdiction to entertain application u/s 9, the learned single judge held that the parties' decision to have

arbitration at Chennai cannot confer jurisdiction on Madras High Court. In the said decision, the learned single judge took the view that even if an

arbitration award is made in Chennai, in view of the express agreement between the parties, conferring jurisdiction in Delhi - the Courts at Delhi,

the award can be challenged u/s 34 will be that competent Court having jurisdiction - ""Delhi Courts"". On the said facts, the learned single judge

held that Madras High Court cannot be termed as ""Court"" to entertain application u/s 9 of the Act.

16. In our considered view, the view of learned single judge in Kirloskar Construction And Engineer Ltd. v. Fast Track Associates 2009 (5) CTC

97 is not a correct interpretation of Section 2(1)(e) of the 1996 Act. By perusal of the judgment, we also find that the attention of the learned single judge has not been drawn to the decision of the First Bench of this Court in *Dynasty Developers Private Limited Vs. Jumbo World Holdings Limited*, A company incorporated and existing in accordance with the laws of British Virgin Islands, *Dandvati Investments and Trading Company Pvt. Ltd.*, A Company incorporated and existing in accordance with the laws of India, *Jerom Trading and Investment Limited*, A company incorporated and existing in accordance with the laws of India and *Gordon Woodroffe Limited*, Now known as *GWL Properties Limited*, A Company incorporated and existing in accordance with the laws of India, , where the First Bench has held that the petition filed u/s 9 cannot be equated to that of a suit. In *Dynasty Developers Private Limited Vs. Jumbo World Holdings Limited*, A company incorporated and existing in accordance with the laws of British Virgin Islands, *Dandvati Investments and Trading Company Pvt. Ltd.*, A Company incorporated and existing in accordance with the laws of India, *Jerom Trading and Investment Limited*, A company incorporated and existing in accordance with the laws of India and *Gordon Woodroffe Limited*, Now known as *GWL Properties Limited*, A Company incorporated and existing in accordance with the laws of India, , challenge was to an order of a single judge, who took the view that to maintain an application u/s 9 of the Act, leave of the Court has to be obtained. Whether or not the leave of the Court is required to initiate proceedings u/s 9 of the Arbitration and Conciliation Act was the question before the First Bench. Holding that no leave is required to initiate proceedings u/s 9 and that application u/s 9 of the Arbitration act and suit cannot be treated on the same footing, referring to various judgments, the First Bench of this Court in the above referred judgment has held as under:

19.According to the learned Judge the leave would be necessary in case this Court has jurisdiction over the part of the cause of action only and as no suit could be filed without leave, no application under the Act under the similar circumstances could be entertained without leave under Clause 12 of the Letters Patent. The analogy of "suit" given in Section 2(1)(e) of the Act only gives us guideline to find out the right court. The

word "suit" acts as an indicator and points out which court will be competent court to entertain the application under the Act. Section 2(1)(e) does

not treat an "application" under the Act as a "suit" and the application under the Act remains an application. As a matter of fact, if a civil suit is filed

covering the subject matter of an arbitration agreement, the Act makes it obligatory for the Court to refer the parties to arbitration in terms of the

arbitration agreement. Therefore, it cannot be contended that the Act intended that an application under the Act and the civil suit should be treated

on the same footing. It has been consistently held that the applications under the Arbitration Act cannot be equated with civil suit. (See H.H. The

Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur Vs. The State of Rajasthan and Others, , Nawab Usmanali Khan Vs. Sagarmal, , Firm

Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., . The procedure for obtaining leave is applicable only to a suit and not

to an application under the Arbitration Act. In our opinion, if a part of the cause action has arisen within the jurisdiction of this Court, the

application under the Arbitration Act can be instituted in this Court and in that event leave under Clause 12 of the Letters Patent is not necessary.

(underlining added)

17. In the case on hand, though the development agreement relates to levelling/clearing/cutting of trees/erecting of compound wall, etc., Section 9

petition emanates out of the development agreement as well as the supplementary agreement dated 11.6.2008 under which the development cost

is said to have been quantified at Rs. 4,91,17,500/-. As discussed infra, the development agreement with Akash Housing and joint development

agreement between the Appellants and Vijay Shanthi Builders for construction of Villas/bungalows are strongly connected with each other.

18. In the joint development agreement with Vijay Shanthi Builders, parties have agreed that the venue of arbitration shall be Chennai. In the

supplementary agreement, since the development cost is said to have been quantified, (which is disputed by the Appellants), Section 9 petition

cannot be equated to a suit for immovable property. The development agreement, supplementary agreement and the MOU were executed in

Chennai and the parties have agreed that in case of any disagreement the same shall be settled by arbitration. Applying the ratio of the decision of

First Bench of this Court in Dynasty Developers Private Limited Vs. Jumbo World Holdings Limited, A company incorporated and existing in

accordance with the laws of British Virgin Islands, Dandvati Investments and Trading Company Pvt. Ltd., A Company incorporated and existing in

accordance with the laws of India, Jerom Trading and Investment Limited, A company incorporated and existing in accordance with the laws of

India and Gordon Woodroffe Limited, Now known as GWL Properties Limited, A Company incorporated and existing in accordance with the

laws of India, , we find that the Original Side of Madras High Court has jurisdiction to entertain the petition u/s 9. The learned single judge was

right in holding that the original Side of Madras High Court has jurisdiction to entertain the petition u/s 9 of the Act.

19. The learned Senior Counsel Mr. K.M. Vijayan nextly contended that there is no manifest intention on the part of the Respondent to have

recourse to arbitration agreement. The learned Senior Counsel for Appellants contended that before appointment of arbitrator Section 9

application cannot be treated lightly and interim order cannot be given unless it is shown that there is a manifest intention to move the arbitration. It

was further submitted that in the application, the Respondent did not make any averment on its manifest intention to appoint arbitrator, which the

learned single Judge did not keep in view.

20. The scope of the words ""before arbitral proceedings"" has been clarified by the Supreme Court in M/s. Sundaram Finance Ltd. Vs. M/s.

NEPC India Ltd., and it is now well settled that the powers of the Court u/s 9 can be invoked even before arbitration proceedings have

commenced as long as there is manifest intention to initiate arbitral proceedings. In Firm Ashok Traders and Another etc. Vs. Gurumukh Das

Saluja and Others etc., , the Supreme Court has held as under:

17. Section 9 permits application being filed in the court before the commencement of the arbitral proceedings but the provision does not give any

indication of how much before. The word ""before"" means, inter alia, ""ahead of; in presence or sight of; under the consideration or cognizance of"".

The two events sought to be interconnected by use of the term ""before"" must have proximity of relationship by reference to occurrence; the later

event proximately following the preceding event as a foreseeable or ""within-

sight"" certainty. The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the court that the arbitral proceedings are actually contemplated or manifestly intended (as M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd., puts it) and are positively going to commence within a reasonable time.

What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. The purpose of enacting Section 9, read in the light of the Model Law and UNCITRAL Rules is to provide ""interim measures of protection"". The order passed by the court should fall within the meaning of the expression ""an interim measure of protection"" as distinguished from an all-time or permanent protection.

21. In the case on hand, the learned single Judge directed the Respondent to initiate the arbitral proceedings within one month from the date of the order (3.12.2010). The learned Counsel for Respondent has also drawn our attention to a request - communication sent by the Respondent to Justice K.P. Sivasubramaniam (Retd.) to find out his willingness to be the arbitrator. Therefore, in such view of the matter, it cannot be said that there is no manifest intention on the part of the Respondent to initiate arbitral proceedings. However, as discussed infra, the agreement between the Appellant and Akash Housing and the Appellants" agreement with Vijay Shanthi Builders are strongly connected. In such view of the matter, we do not propose to delve into ""Respondent's manifest intention or otherwise"".

22. On behalf of the Appellants, it was submitted that in so far as the joint development agreement with Vijay Shanthi Builders, which also contains an arbitration clause, Vijay Shanthi Builders has filed civil suit for specific performance in C.S. No. 36 of 2010. According to the Appellants, the development agreement with Akash is an inchoate agreement and it cannot stand in isolation and depends upon the development agreement with Vijay Shanthi Builders. The case of Appellants is that since the development agreement with Akash Housing and joint development agreement with Vijay Shanthi Builders are inter-dependent, and are integral part of one and the same, the conduct of the Respondent is manifest by pursuing to

parallel proceedings by filing petition u/s 9 of the Arbitration Act and simultaneously Civil Suit for specific performance.

23. Repelling the said contention, the learned Counsel for the Respondent submitted that as per the supplementary agreement, the amount of Rs.

Rs. 4,91,17,500/- has been quantified and therefore the development agreement with Akash Housing and the supplementary agreement have to be

looked independently. The learned Counsel would further contend that Akash housing is a partnership firm, whereas Vijay Shanthi Builders is a

limited Company and both the entities, being different, the agreements cannot be said to be inter-dependent.

24. We have carefully considered the rival contentions. As pointed out earlier, both agreements between the Appellants and Respondent "" Akash

Housing (17.05.2006) and M/s. Vijay Shanthi Builders (dated 17.05.2006) are in respect of the same property. Of course, in the development

agreement with Vijay Shanthi Builders, there are two other survey numbers viz., S. No. 177/2 and 180/2 "" 1.26 acres. Akash Housing, a

partnership firm is represented by its Partner "" Mr. Suresh Kumar. The same person "" Mr. Suresh Kumar is representing Vijay Shanthi Builders as

its Managing Director. Supplementary agreements were executed between the Appellants and Akash Housing and M/s. Vijay Shanthi Builders on

the same day i.e., 11.6.2008. Though the entities are different in both the agreements, the subject matter is the same and both the firm and

Company are represented by Mr. Suresh kumar. It is pertinent to note that a single power of attorney has been executed by the Appellants in

favour of Mr. Suresh Kumar representing Vijay Shanthi Builders and the same has been used by both the Respondent and Vijay Shanthi Builders.

Furthermore the cancellation of the power of attorney given in favour of Vijay Shanthi Builders has been shown as one of the cause of action. In

our considered view, the developmental activities such as levelling/clearing/cutting of trees/erecting of compound wall agreed by Akash Housing is

strongly connected with the agreement with Vijay Shanthi Builders. In Clause 5 of the supplementary agreement, the Appellants agreed to pay to

the Respondent ""on receipt of the amounts"" from the sale of its share in the developmental activities envisaged by the Appellants. The Appellants

would receive the amount from the sale of their share in the developmental activities when M/s. Vijay Shanthi Builders complete the construction of

villas/bungalows. We are of the view that the payment of the amount to Akash Builders depends upon the construction of Villas/bungalows and its marketing and both the developmental agreements between the Appellants and Akash Housing and Vijay Shanthi Builders as well as the supplementary agreements dated 11.06.2008 are strongly connected. The dispute between the Appellants and Akash Housing cannot be determined in isolation de hors the dispute between the Appellants and Vijay Shanthi Builders.

25. It is pertinent to note that Vijay Shanthi Builders has filed suit for specific performance in C.S. No. 36 of 2010 before the High Court, Madras.

In the said suit, the Appellants filed Application No. 516 of 2010 to reject the plaint in C.S. No. 36 of 2010 and also Application No. 648 of

2010 to revoke the unconditional leave granted in O.A. No. 123 of 2010 dated 11.1.2010. Holding that the suit for specific performance relates

to immovable properties situated outside the Original Side jurisdiction of High Court, by the order dated 21.4.2010 the learned single judge

allowed Application No. 648 of 2010 and revoked the leave granted. The learned single judge directed the Registry to return the plaint for filing it

before the Court having the territorial jurisdiction and given liberty to the Appellants to raise the point regarding the arbitration clause as and when

the suit is filed before the competent Court. Being aggrieved by revoking of leave and allowing application "" A. No. 648 of 2010, Vijay Shanthi

Builders has preferred appeal in O.S.A. No. 194 of 2010. Referring to Adcon Electronics Pvt. Ltd. v. Daulate and Anr. 2001 (4) CTC 39, by the

Order dated 16.7.2010, the Division Bench of this Court allowed the O.S.A. No. 194 of 2010 holding that ""the suit for specific performance is

not for the land but only for enforcement of the agreement and held that the suit is maintainable."" As against the said order, the Appellants have

filed review in Review Application No. 132 of 2010 and the same also came to be dismissed by the order dated 22.11.2010.

26. While praying to revoke unconditional leave granted for filing the suit, the Appellants also prayed to vacate the interim injunction and the order

of status quo granted in O.A. No. 49 of 2010 and O.A. No. 50 of 2010. Application No. 648 of 2010 was allowed by the learned single judge.

Consequent to the revocation of the unconditional leave, the interim injunction granted in Application No. 49 of 2010 in C.S. No. 36 of 2010 and

the status quo in Application No. 50 of 2010 dated 12.1.2010 were vacated.

27. It is pertinent to note that as against vacating of interim injunction and status quo in Application Nos. 49 and 50 of 2010, Vijay Shanthi

Builders has not chosen to prefer any appeal. As we pointed out earlier, in both the development agreements, both the firm and the Company are

represented by the same individual and both the agreements are strongly connected. The dispute pertaining to Akash Housing cannot be

determined in isolation without examining the dispute between the parties in respect of Vijay Shanthi Builders. When the injunction application filed

by Vijay Shanthi Builders, who was put in possession and apparently has a larger right than the very same relief cannot be given to the Respondent

herein. In such facts and circumstances, whether it is ""just and convenient"" to grant interim injunction as an interim measure of protection as

contemplated u/s 9 of the 1996 Act. The purpose of Section 9 is to provide an interim measure of protection to the parties to prevent the ends of

justice from being defeated. Section 9(2)(e) vests the Court with the power to grant such interim measures of protection as may appear to be just

and convenient. The jurisdiction under the ""just and convenient"" clause is quite wide in amplitude, but must be exercised with restraint. Interim

measures are to be granted by the Court so as to protect the right in adjudication before the arbitral tribunal from being frustrated. It does not

allow the Court the discretion to exercise unrestrained powers and frustrate the very object of arbitration.

28. u/s 9 of the 1996 Act, for the Court to grant interim injunction, the Court must be satisfied

(i) existence of prima facie case,

(ii) balance of convenience and

(iii) potential for irreparable loss or injury. The power u/s 9 has been considered as essential for strengthening and establishing the effectiveness of

the arbitration proceedings. Even if a prima facie case existed in favour of a party, the Court will grant ""no injunction"", where the Court feels that

the grant of injunction would frustrate the object of the arbitration. Since the agreement between the Appellant and Respondent is strongly

connected with Appellant's agreement with Vijay Shanthi Builders of which the suit is pending, in the facts and circumstances of the case, we are

of the view that this is not a fit case where the Court has to exercise its discretion u/s 9 of the Arbitration Act. The learned single judge did not keep in view that the dispute between the Appellants and the Respondent "" Akash Builders cannot be examined without examining the dispute of the Appellants with Vijay Shanthi Builders. In such facts and circumstances of the case, the order of the learned single judge granting interim injunction is liable to be interfered with. At the risk of repetition, it may be noted, that interim injunction granted in C.S. No. 36 of 2010 came to be vacated which remains unchallenged, grant of any interim injunction u/s 9 of the Act will create conflicting orders. In view of our conclusion, we do not propose to go into the next limb of submission of the Appellants that the Respondent has no manifest intention of referring the dispute to arbitration.

29. In the result, the order of the learned single judge dated 3.12.2010 made in O.A. Nos. 40 and 41 of 2010 are set aside and these appeals are allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous petitions are closed.