

**(2017) 07 KAR CK 0082**  
**In the Karnataka High Court**  
**Case No : 3459 of 2017 (AA of DB)**

|                                               |            |
|-----------------------------------------------|------------|
| MR VINAY KUMAR KAPOOR S/O MR RAJ KUMAR KAPOOR | APPELLANT  |
| Vs                                            |            |
| EMBASSY ONE DEVELOPERS PVT LTD                | RESPONDENT |

**Date of Decision :** 18-07-2017

**Acts Referred:**

[Arbitration and Conciliation Act, 1996](#), [Section 9](#) - Interim measures, etc., by Court

**Citation :** (2017) 07 KAR CK 0082

**Hon'ble Judges :** Subhro Kamal Mukherjee, P S Dinesh Kumar

**Bench :** DIVISION BENCH

**Advocate :** V Srinivasa Raghavan, Nikhilesh Rao M, K G Raghavan, Suraj Govinda Raj, Anup S Shaw

**Final Decision :** Dismissed

## Judgement

1. In this appeal, the appellant has assailed the order dated March 30, 2017, passed in Arbitration Appeal No 392 of 2016, on the file of XXXVII Additional City Civil & Sessions Judge, Bengaluru City, on an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 [for short, the Act].

2. The learned trial judge rejected the said application, holding that the application was belated, inasmuch as, the agreement was terminated some time in April, 2016 and the appellant-applicant approached the court after six months. The learned trial judge noticed that a serious case of fraud is alleged by the respondent, which required adjudication. Ultimately, the learned trial judge came to the conclusion that the appellant-applicant has failed to make out a prima facie case in order to get an order of injunction.

3. The learned trial judge referred to a clause of the agreement, where there is a provision to the effect that in the event of breach of contract or agreement, damages can be recovered from the defaulting party. Considering all these aspects, the learned trial judge dismissed the application filed under Section 9 of the Act.

4. Mr K G Raghavan, learned senior advocate appearing for the respondent, points out that a serious question of fraud is alleged by the respondent and the arbitral proceedings may not be the appropriate proceedings to decide the issue of alleged fraud.
5. Be that as it may, as we do not find any merit in the appeal, the appeal is, summarily, dismissed.
6. However, we record that we have not gone into the claim and the counterclaim of the parties. All issues are kept open.
7. We make no order as to costs.