

Excel Casting Pvt. Ltd. Vs. Cogent Ventures India Ltd. and ors.

Excel Casting Pvt. Ltd. Vs. Cogent Ventures India Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/712306

Court : Delhi

Decided On : Apr-02-2009

Reported in : (2010)157PLR5

Judge : Shiv Narain Dhingra, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 9

Appeal No. : O.M.P. No. 355 of 2006

Appellant : Excel Casting Pvt. Ltd.

Respondent : Cogent Ventures India Ltd. and ors.

Advocate for Def. : S.K. Pandey, Adv.

Advocate for Pet/Ap. : Vikas Goel, Adv

Disposition : Petition allowed

Judgement :

Shiv Narain Dhingra, J.

1. This application/petition under Section 9 of the Arbitration & Conciliation Act, 1996 has been filed by the petitioner against the respondents with a prayer that the respondents be restrained from disposing, selling or creating third party interest in property No. 810/2, Chattarpur Extension, New Delhi till the arbitral

award was made, and in case the award being in favour of the petitioner, till it was fully satisfied.

2. The petitioner had entered into a Tripartite Agreement with the respondents and under this Tripartite Agreement the petitioner was to renovate/construct/reconstruct building at the above premises and to do interiors and other maintenance. It is submitted that the petitioner successfully completed its part of the obligation as per the agreement and renovated the structure at the ground floor including interiors, flooring, POP, glass-work etc. in accordance with directions and consent of the respondents. However, the respondents failed to make payment of Rs. 23.80 lac which was the amount due from the respondents in terms of the agreement and work done. The petitioner, therefore, filed an application before this Court for appointment of an Arbitrator in terms of the agreement between the parties. The petitioner filed the present application/petition for interim protection.

3. Notice of this application was issued to the respondents. Respondents put appearance however, no reply was filed. Thereafter, parties sought time for negotiating a settlement and an interim order was passed directing respondents to maintain status-quo. In the meantime, this application/petition was dismissed in default for non-prosecution. It was again restored on an application by the petitioner and an order was made for issuance of notice to the respondents, interim order was also restored. Against, the petitioner did not take steps for service of the respondents and the interim order was vacated and the matter came up for final hearing.

4. It is seen that the respondents despite several opportunities have not filed reply to the application/petition. There is no doubt that there is a dispute between the parties in respect of the accounts and the accounts of the petitioner are yet to be settled in terms of the agreement between the parties. There is an arbitration clause according to which the dispute between the parties has to be referred to the arbitration. In order to secure the petitioner's amount, I consider that it would be necessary that respondents be restrained from selling or disposing of the property in question till the dispute of the parties is adjudicated by the Arbitrator. I,

therefore, allow this application/petition and it is directed that the respondents shall not sell property No. 810/2, Chattarpur Extension, New Delhi till the dispute between the parties is adjudicated by the Arbitrator and award is passed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com