



HC-KAR

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>RD</sup> DAY OF JUNE, 2026**

**PRESENT**

**THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE**

**AND**

**THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA**

**COMMERCIAL APPEAL NO. 491 OF 2025**

**C/W**

**COMMERCIAL APPEAL NO. 421 OF 2025**

**IN COMAP No. 491/2025**

**BETWEEN:**

1. M/S NITESH ASSET HOLDINGS  
A PARTNERSHIP FIRM HAVING REGISTERED  
OFFICE AT, #25/A, 2<sup>ND</sup> FLOOR, IMPERIAL COURT  
CUNNINGHAM ROAD, BENGALURU - 560 052  
REPRESENTED BY ITS  
FINANCE CONTROLLER & BUSINESS HEAD  
AND AUTHORISED SIGNATORY  
MR. N. PARASURAM
2. SRI NITESH SHETTY  
S/O LATE P.V. SHETTY  
AGED 46 YEARS  
MANAGING PARTNER  
M/S NITESH ASSET HOLDINGS  
HAVING ADDRESS AT NO.25/A  
2<sup>ND</sup> FLOOR, IMPERIAL COURT  
CUNNINGHAM ROAD  
BENGALURU - 560 001

...APPELLANTS

(BY SRI S.S. NAGANAND, SENIOR ADVOCATE FOR  
SMT. SUMANA NAGANAND, ADVOCATE)





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C/W COMAP No. 421 of 2025

**AND:**

1. SMT B.R. MYTHRAI SETTY  
D/O. LATE DR. B.V. RAMALINGA SETTY  
AGED ABOUT 64 YEARS  
ADDRESS AT #42/3  
LAVELLE ROAD  
BENGALURU - 560 001
2. DR. B.R. RAVINDRA SETTY  
S/O. LATE DR. B.V. RAMALINGA SETTY  
AGED ABOUT 59 YEARS  
ADDRESS AT #42/3  
LAVELLE ROAD  
BENGALURU - 560 001

...RESPONDENTS

(BY SRI BADRI VISHAL, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 9 OF THE ARBITRATION & CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 14.07.2025 AT ANNEXURE-A, PASSED IN COM.AA NO.137/2024 ON THE FILE OF THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE & ETC.

**IN COMAP NO. 421/2025**

**BETWEEN:**

1. M/S. NITESH ASSET HOLDINGS  
A PARTNERSHIP FIRM HAVING REGISTERED  
OFFICE AT, #25/A, 2<sup>ND</sup> FLOOR  
IMPERIAL COURT, CUNNINGHAM ROAD  
BENGALURU - 560 052  
REPRESENTED BY ITS  
FINANCE CONTROLLER &  
BUSINESS HEAD AND



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AUTHORISED SIGNATORY  
MR. N PARASURAM

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR ADVOCATE FOR  
SRI NAGESH MORO, ADVOCATE)

**AND:**

1. SMT. B.R. MYTHRAI SETTY  
D/O. LATE DR.B.V. RAMALINGA SETTY  
AGED ABOUT 65 YEARS  
ADDRESS AT #42/3, LAVELLE ROAD  
BENGALURU - 560 001
2. DR. B.R. RAVINDRA SETTY  
S/O. LATE DR. B.V RAMALINGA SETTY  
AGED ABOUT 60 YEARS  
ADDRESS AT #42/3, LAVELLE ROAD  
BENGALURU - 560 001

...RESPONDENTS

(BY SRI BADRI VISHAL, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH SECTION 9 OF THE ARBITRATION & CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 14.07.2025 AT ANNEXURE-A, PASSED IN COMM.AA NO.208/2024 ON THE FILE OF THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, AND CONSEQUENTLY ALLOW THE COMM.AA NO.208/2024 UNDER SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT 1966 R/W RULE 9 OF THE HIGH COURT OF ARBITRATION (PROCEEDINGS BEFORE COURTS) RULES 2001 SEEKING AN INTERIM RELIEF AGAINST THE RESPONDENTS IN RESPECT OF THE SCHEDULE "B" SCHEDULE PROPERTY & ETC.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE  
and  
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

### **ORAL JUDGMENT**

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeals under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning a common order dated 14.07.2025 in Com.A.A. No.137/ 2024 connected with Com.A.A.No.208/2024 passed by the LXXXV Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**].

2. The parties filed the said petitions under Section 9 of the A&C Act seeking interim measures of protection. The respondents had filed COM.A.A.No.137/2024, *inter alia*, praying for an order restraining the appellants or their agents or any other persons claiming through them from interfering with their peaceful possession and enjoyment of Schedule 'B' property, which is described as under:

#### **"SCHEDULE "B" PROPERTY**

All that piece and parcel of the property bearing municipal no.41/1, 42/2 and 42/3 and measuring 8571



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sq ft of undivided share in the land (out of total extent of 15175 sq ft) consisting of building having basement, ground and first floors along with 50% rights over the terrace area, situated at Lavelle Road, Bengaluru and bounded on:

ON EAST: Lavelle Road  
WEST : Remaining portion of Mudumbai Property  
NORTH : Remaining portion of Mudumbai Property  
SOUTH: Property belonging to Mr.M.Padmanabhan"

3. The appellants had filed COM.A.A.No.208/2024, *inter alia*, praying that the respondents be restrained from alienating or encumbering or creating any third-party rights in respect of Schedule 'B' property till the disposal of the arbitral proceedings.

4. The disputes between the parties arise from the Joint Development Agreement dated 15.08.2018 [hereafter, '**the JDA**']. The respondents who were landowners of the subject land (Schedule 'A' and Schedule 'B') had entered into the JDA with the appellants for the development of the subject land. However, possession of the subject land was not handed over to the appellants; therefore, the project, which was to be jointly developed (with the appellants developing it and the respondents contributing the land), could not be undertaken.



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5. It is contended on behalf of the respondents that the appellants had failed to pay the amount of ₹3 crores as agreed under the JDA and, therefore, the respondents had not handed over the possession of the subject land. It is earnestly contended that the obligation of the respondents to hand over possession of the subject properties would arise only on the appellants, making the payment of ₹3 crores.

6. Clause 3 of the JDA, which is relied upon by the learned counsel for the respondents, reads as under:

### "3. NON-REFUNDABLE DEPOSIT

3.1 In consideration of the Landowners permitting the Developer to develop the Property, in the manner detailed in this Agreement and agreeing to transfer the Developer's Land Share to the Developer or its nominees, the Developer hereby agrees to pay a non-refundable amount of Rs.4,00,00,000/- (Rupees Four Crore Only) ("**Non-Refundable Deposit**"), which is inclusive of Rs.40,00,000/- (Rupees Forty Lakh Only) already paid to the Landowners by the Confirming Party No.1. The Developer has agreed to pay the remaining Deposit to the Landowners in the following manner:

3.1.1 A sum of Rs.60,00,000/- (Rupees Sixty Lakh Only) is paid on this day, favour of the Landowners as below:

a) Demand Draft bearing No. '057331' dated 14/08/2018 drawn on Canara Bank,



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Cunningham Road, Bangalore-560052, for an amount of Rs.20,00,000/- (Rupees Twenty Lakh Only) in favour of Dr.B.V.Ramalinga Setty.

- (b) Demand Draft bearing No.'057332' dated 14/08/2018 drawn on Canara Bank, Cunningham Road, Bangalore-560052, for an amount of Rs.20,00,000/- (Rupees Twenty Lakh Only) in favour of Dr.B.R.Ravindra Setty.
- (c) Demand Draft bearing No. 057333' dated 14/08/2018 drawn on Canara Bank, Cunningham Road, Bangalore-560052, for an amount of Rs.20,00,000/- (Rupees Twenty Lakh Only) in favour of Mrs.B.R.Mythrai Setty.

The Landowners acknowledge the receipt of the above Demand Drafts.

- 3.1.2 A sum of Rs.3,00,00,000/- (Rupees Three Crore Only) shall be paid upon handing over of vacant possession of the property without there being any tenancy attached thereto of whatsoever nature and on completion of title clearance.
- 3.2 Before handing over of vacant possession of the property, the Landowners shall remove the furnishings and fittings like teakwood, decorative articles, etc., in the house portion at their own cost"

7. It is apparent from the above that the obligation of the appellants to pay the amount of ₹3 crores would arise only at the time of the respondents' handing over vacant possession of the subject land. Concededly, there is no communication on record whereby the respondents had offered to hand over possession of the subject land to the appellants. In this view, *prima facie*, we are



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unable to accept that there was any default on the part of the appellants in making payment of the non-refundable deposit.

8. The learned Commercial Court had noted that there were several communications on record, whereby the appellants had called upon the respondents to hand over vacant possession of the subject land for commencing the project. However, the respondents had not done so. Notwithstanding the same, the learned Commercial Court did not grant the interim measures sought by the appellants and confined the impugned order only to the creation of a charge to the extent of ₹2,55,50,000/- over the schedule 'B' property to protect and preserve the subject matter of the arbitration. However, the learned Commercial Court had protected the respondents by directing that the possession of Schedule 'B' property shall not be interfered with.

9. It is relevant to note that the sum of ₹2,55,50,000/- had been paid by the appellants in various tranches. The last payment was made on 30.08.2023. The respondents had accepted the instalments without any reservation or protest. Thus, at least until August 2023, the parties were treating the JDA as operative.



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10. Given that the parties have already instituted arbitral proceedings, it would be necessary to protect the subject matter of the dispute. We are informed that the statement of claim has also been filed today.

11. Bearing in mind that the appellants' claim is for specific performance of the JDA, it would be necessary to issue interim measures of protection to preserve the subject matter of the arbitration and ensure *status quo* in respect of the subject land, thereby restraining the respondents from alienating or encumbering the subject land (described as the Schedule 'A' and Schedule 'B' Properties in the JDA) till the conclusion of the arbitral proceedings or until any other orders are passed by the arbitral tribunal.

12. Insofar as the impugned order relates to the respondents' petition under Section 9 of the A&C Act (COM.A.A.No.137/2024), we find no infirmity with the decision of the learned Commercial Court restraining the appellants from interfering with the respondents' possession of the property in question (Schedule B Property).



13. In the aforesaid circumstances, COMAP No.491/2025 which relates to the impugned order arising out of the respondents' petition (COM.A.A.No.137/2024), is dismissed. COMAP No.421/2025 is partly allowed to the limited extent of directing the parties to maintain *status quo* in respect of the (Schedule 'B' property referred to in the JDA) till the conclusion of the arbitral proceedings or till further orders are passed by the arbitral tribunal in this regard.

14. We clarify that this order would not preclude the parties from approaching the arbitral tribunal for any other interim measures or for seeking modification or vacation of the interim measures of protection as directed by the learned Commercial Court or in terms of this order.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(K.S. HEMALEKHA)  
JUDGE**

KPS  
List No.: 1 Sl No.: 1