2026:DHC:7336

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st AUGUST, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010204592026**

\+ **ARB. A. (COMM.) 36/2026**

M/S ARYAN BAGGA ASSOCIATES PVT LTD & ORS.

.....Petitioners

Through: Mr. Amit Sibal, Sr. Advocate with Mrs. Deepti Kathpalia, Mr. Aiman, Mr. Ankit Handa, Mr. Darpan Sachdeva and Mr. Yaman, Advocates

versus

KAMLESH DUDEJA .....Respondent

Through: Mr. Amit Rawal, Sr. Advocate with Mr. Naveen Sharma, Ms. Rishika, Mr. Aman Raghav and Mr. Akash, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The present Petition has been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (*herein referred to as the "***Act**") against the Impugned Order dated 02.04.2026, *(herein referred to as the* ***"Impugned Order")*** passed by the Learned Arbitrator under Section 17 of the Act.

2. Relevant facts leading to the filing of the present Petition are stated as under:

a. A property bearing no. F-14/13, Block F-14, Model Town, Delhi- 110019 ["**the Property**"], was purchased by the directors of the Appellant no.1 company by virtue of a

registered sale deed dated 31.10.2015. At the aforesaid Property, the Appellant no. 1 company was incorporated on 29.12.2015.

b. Thereafter, the Appellant no.1 company entered into a Franchise Agreement dated 25.9.2017 with Ozone Spa Private Limited as per which the Appellant no.1 was to establish, run and operate fitness center services and the aforesaid Franchise Agreement was executed for a total period of 9 years.

c. It is stated that pursuant to the Franchise Agreement, the Appellant no. 1 undertook various interior work on the second and third floor for the purpose of setting up the fitness and wellness centre, for which the Appellant No.1 incurred an expense of Rs. 3,50,00,000/-

d. Hereafter, the Property was sold by the directors of the Appellant no.1 to one CNB FINWIZ Private Limited by virtue of a Sale Deed dated 27.05.2017. It is stated that the Property was sold to CNB Finwiz Pvt. Ltd. and transferred back to the directors multiple times; however, the Appellant No.1 retained continuous physical possession over the Property throughout the period.

e. Subsequently, Appellant No. 2, one of the directors of the Appellant no. 1, facilitated and witnessed a registered sale deed for the purchase of the Property by the Respondent herein i.e. Mr. Kamlesh Dudeja from CNB Finwiz Pvt. Ltd. For the said purpose, a registered Lease Deed was executed between the parties for a period of 3 years, beginning from 01.07.2021 and

ending on 30.06.2024 at a monthly rent of Rs.1,50,000. Further, the Appellant herein deposited a security with the Respondent totalling to a sum of Rs. 3,00,000/-. In addition to this, the Appellant claims to have invested several crores in civil works, interior fit-outs, and gym machinery, which it argues was the reason for the relatively lower rent fixed at Rs.1,50,000/-.

f. It is stated that upon the expiry of the lease period on 30.06.2024, the Appellant remained in possession and a mutual agreement was reached between the parties to enhance the rent to Rs. 1,72,500/-, which was paid and unconditionally accepted by the Respondent. This fact is disputed by the Respondent who contends that there was no mutual agreement to enhance the rent to Rs.1,72,500/-.

g. It is stated that the parties reached at a consensus that this new arrangement would be penned down in a form of a renewed Lease Deed which was to be duly registered by the parties on 15.01.2025; however, this could not fructify due to the failure on the part of the Respondent to appear and execute the renewed Lease Deed.

h. Relying on the repeated representations given by the Respondent with respect to the execution of the renewed Lease Deed, the Appellants invested a sum of Rs. 18,56,847/- for the purchase of equipment and machinery to facilitate its business operations. However, in lieu of the fact that the Respondent had failed to execute the renewed Lease Deed, the position of the Appellants has been irreversibly altered.

i. The Respondent later averred that due to her advanced age, she was not inclined to extend the period under the Lease Deed and intended to sell the Property to relocate permanently to London with her children. Hence, instead of completing the renewal, the Respondent issued a legal notice on 24.02.2025, seeking eviction and claiming the Appellants had become an unauthorised occupant as of 01.07.2024.

j. On 19.01.2025 and 21.01.2025, the Respondent's family members, along with some others, trespassed on the Property, misbehaved with security personnel, and attempted to forcibly lock the premises which culminated in a police complaint.

k. Subsequently, on 24.02.2026, the Respondent issued a Legal Notice demanding that the Appellants vacate the premises within seven days and pay occupation charges at a market rate of Rs.8,50,000 per month. On 28.02.2026, an addendum to the legal notice was issued, officially invoking the arbitration clause under the Lease Deed.

l. Following the invocation of the arbitration clause, the Respondent filed a petition under Section 11(6) of the Act in this Court and *vide* Order dated 08.07.2025, the High Court allowed the petition and directed the Coordinator of the Delhi International Arbitration Centre (DIAC) to appoint a Sole Arbitrator, and as a result, Mr.Sanjay Dewan was appointed as the Sole Arbitrator.

m. On 01.09.2025, prior to the constitution of the Arbitral Tribunal, the Respondent filed a petition under Section 9 of the Act being

OMP(I)(COMM) 357/2025 seeking urgent interim protection against the Appellants, including an injunction against subletting and directions for the payment of occupation charges. Subsequently, upon the constitution of the Arbitral Tribunal, this Court on 04.11.2025, directed that the Section 9 petition be treated as an application under Section 17 to be decided by the Learned Arbitrator.

n. On 02.06.2026, the Learned Arbitrator passed the Impugned Order directing the Appellant to pay Rs. 3,50,000 per month for the period from 01.07.2024 to 31.01.2026, Rs. 4,00,000 per month from 01.02.2026 till the disposal of the case and payment of differential arrears for the past period, totalling approximately Rs.33,72,500.

3. Hence, the present Petition has been filed by the Appellant herein seeking the setting aside of the Impugned Order dated 02.04.2026.

4. It is the case of the Appellants that the direction to pay enhanced monthly charges of Rs. 3,50,000 and Rs. 4,00,000 per month, along with retrospective differential amounts totalling approximately Rs.33,72,500/- effectively grants final monetary relief under the guise of an interim measure. It is submitted that the Learned Arbitrator has prematurely adjudicated the principal dispute, which could only have been determined through a full-fledged trial after the parties have led evidence. It is contended that the Impugned Order travels beyond the preservative and protective intent of Section 17 of the Act, and instead imposes a substantive and recurring financial burden upon the Appellant herein without giving the Appellant an opportunity to prove its case.

5. It is submitted by the Learned Senior Counsel for the Appellant that the Impugned Order operates like an attachment before judgment without satisfying the necessary conditions, i.e., subsistence of a risk of asset alienation or intent to frustrate the enforcement of a future award. It is argued that the Learned Arbitrator failed to satisfy the essential parameters of *prima facie* case, balance of convenience, and irreparable harm. In addition, the Learned Arbitrator has failed to take into account that the Appellant had a salubrious business and consistently made timely rent payments even after the expiry of the Lease period, negating any claim of urgency or imminent threat to the Respondent.

6. On the aspect of quantification, it is submitted that there is no cogent material for the Learned Arbitrator to arrive at the figures of Rs. 3,50,000 and Rs. 4,00,000 per month. It is submitted by the Learned Senior Counsel for the Appellants that the Learned Arbitrator's reliance on an independent Lease Deed for the first floor of the same building was incorrect, on the ground that the same was an unrelated transaction for a different space with different frontage and access, and the same was looked into mechanically without trial or any expert assessment. In fact, the quantum of use and occupational charges/ *mesne* profits is seriously disputed between the parties and requires evidence to be led first for reaching to a confirmative figure.

7. On the aspect of possession and renewal, a core submission made by the Learned Senior Counsel for the Appellant is that the Respondent unconditionally accepted the enhanced rent of Rs.1,72,500 for several months after the initial Lease Deed expired. It is argued that this conduct created a tenancy by holding over under Section 116 of the Transfer of Property Act,1882, meaning their possession was juridical and lawful, and

not unauthorised. The Respondent should be estopped from denying the renewal because it induced the Appellant to alter its position by making large-scale capital investments and paying Rs.42,600 in stamp duty for the new deed based on the Respondent's assurances. He further submits that in any event, the Sole Arbitrator could not have directed for payment of the amounts to the Respondent as it amounts to grant of final relief at the interim stage, which is not permissible as the final determination of amount will require parties to lead evidence and prove their case.

8. Reliance has been placed on the judgement of the Apex Court in Evergreen Land Mark (P) Ltd. v. John Tinson& Co. (P) Ltd., **(2022) 7 SCC 757,** to further the argument that where the dispute between the parties concerns rental amounts, no final determination of the same can be done under Section 17 of the Act.

9. It is further submitted by the learned Senior Counsel for the Appellants that the judgements relied on by the Respondents are distinguishable on facts of admitted liability, whereas liability in the present case is explicitly disputed between the parties.

10. *Per Contra*, Learned Senior Counsel for the Respondent has placed reliance on certain clauses of the Lease Deed, primarily Clauses 21 and 29. It is the case of the Respondent that as per Clause 21 of the Lease Deed, the Appellant was responsible for vacating and handing over peaceful possession of the Property, failing which the Respondent was entitled to liquidated damages equivalent to double the prevailing rent payable on daily basis from the date of handing over of the Property. Further reliance is placed on Clause 29 of the Lease Deed, as per which the lease deed executed in 2021 was the only/entire agreement between the parties which could not

be modified or changed except by a written amendment agreed between the parties. In the absence of a written agreement, the possession of the Property by the Appellant beyond 30.06.2024 is illegal and since the Appellant has refused to hand over possession after the Lease Deed has expired, the Respondent herein is entitled to use and occupational charges/ mesne profit for the unauthorized use of the premises. It is submitted by the Learned Senior counsel for the Respondent that the Appellants in the Statement of Defence has admitted that upon termination, it was obligated to return the Property back in its original condition to the Respondent, and since the Appellants have failed to do so, the Respondent is entitled to enhanced use and occupational charges/Mesne profits post the termination of the Lease Deed.

11. It is further submitted by the learned Senior Counsel for Respondent that the Appellants were in illegal possession of the Property is established by the fact that even after the expiry of the Lease Deed, it had on its own whims and fancies, continued to pay an increased rent with the intention to retain possession over the Property. However, the said arrangement was never really in place due the fact that no new Lease Deed has been executed in writing in terms of Clause 29 of the Lease Deed.

12. Reliance has been placed on a judgement of this Court in Supertrack Hotels Pvt. Ltd. v. Friends Motels Pvt. Ltd., **2017 SCC OnLine Del 11662** to contend that the power of the Arbitral Tribunal under Section 17 is akin to the powers of a Court under Section 9 of the Act. It is submitted by the Learned Senior Counsel for the Respondent that, like a Court, the Tribunal may direct the Respondent to deposit such amount on account of arrears up to the date of the order and thereafter continue to deposit in each succeeding

month the rent claimed in consonance with the principles of Order XV-A of the CPC.

13. Heard the Learned Senior Counsels for the parties and perused the material on record.

14. Under Section 37(1) of the Act, an appeal can lie against an order setting aside or refusing to set aside an arbitral award under Section 34, as also against orders granting or refusing to grant any interim measure under Section 9 of the Act. Section 37(2) provides for an appeal from an order of an Arbitral Tribunal accepting a jurisdictional plea under sub section (2) or sub section (3) of Section 16(2). Section 37(2)(b) expressly provides for an appeal against an order of the Arbitral Tribunal granting or refusing to grant an interim measure under Section 17 of the Act. However, the mere availability of an appellate remedy does not confer upon the Court an unrestricted power of re-appreciation of the order passed by the Arbitral Tribunal. The legislative scheme of the Act is founded upon minimal judicial intervention, party autonomy and respect for the arbitral process. Consequently, jurisdiction of the Courts under Section 37 of the Act is supervisory in nature and remains confined within its narrow limits. The restraints applicable under Section 34 of the Act equally apply to an interlocutory order under Section 37(2)(b) of the Act. Indeed, such restraint operates with an even greater force at the interim stage, since interference with an interim order may frustrate the arbitral proceedings.

15. The reason for such heightened restraint lies in the very nature of an order passed under Section 17 of the Act. The views expressed by an Arbitral Tribunal while considering an application for interim relief are interlocutory in character and do not constitute a final expression of opinion

upon the merits of the dispute. Such views remain subject to modification or review at the stage of the final award. Section 17 of the Act is intended to operate as a protective measure, the aim being to preserve the sanctity and efficacy of the arbitral process and to ensure that the parties are on an equitable footing pending final adjudication. The interlocutory character of such an order must, therefore, necessarily be kept in mind while exercising jurisdiction under Section 37(2)(b).

16. A Co-ordinate Bench of this Court in Lava International Ltd. v. Mintellectuals LLP, **2024 SCC OnLine Del 6908** while discussing the objective of an interim order has observed as under:-

> ***"18****. Dealing particularly with Essar House, the Court came to the following conclusion:*
>
> *"…Thus, the underlying principle that the interim orders for securing a claimant in an arbitral proceeding can be made only in cases where the court is prima facie satisfied that but for securing the claimant, it would be unable to reap the benefits of a favourable award, was satisfied in that case."*
>
> ***19.*** *The Division Bench thus proceeded on the basis that the underlying substantial principle applicable to such cases, was that a claimant can be secured if the Court is prima facie satisfied that it would otherwise be unable to reap the benefits of a favourable award. This is the ratio of Essar House, as explained in Skypower. This condition was found to be established on the facts of Essar House. However, the judgment of the learned Single Judge in Skypower was set aside, as no observations or findings to this effect had been made. The Division Bench noted that the learned Single Judge had not rendered a finding that the*

> *claimant/petitioner would be unable to enforce an arbitral award that may be made in its favour, absent an order for securing the amounts in dispute. "*

17. In the above judgment, the Court has also reiterated that an interim order passed by an Arbitral Tribunal ought to be interfered with only where it is perverse or manifestly arbitrary. While the exercise of such power may be examined for its legality, the Court must remain mindful that the decision is discretionary and interlocutory in nature.

18. It cannot be overlooked that considerations governing Section 37(2)(b) are fundamentally similar to those applicable under Section 34 of the Act. Interference is warranted only where the order suffers from patent illegality or perversity. The Court is not entitled to interfere merely because another view is possible or because the Arbitral Tribunal might have exercised the discretion differently.

19. Further, this Court in World Window Infrastructure Private Limited v. Central Warehousing Corporation, **(2021) 3 HCC Del 731** observed as under:

> *"67. Views expressed by arbitrators while deciding applications under Section 17 are interlocutory views. They are not final expressions of opinion on the merits of the case between the parties. They are always subject to modification or review at the stage of final award. They do not, therefore, in most cases, irreparably prejudice either party to the arbitration. Section 17 like Section 9 is intended to be a protective measure, to preserve the sanctity of the arbitral process. The pre-eminent consideration, which should weigh with the arbitrator while examining a Section 17 application, is the necessity to preserve the*

> *arbitral process and ensure that the parties before it are placed on an equitable scale. The interlocutory nature of the order passed under Section 17, therefore, must necessarily inform the court seized with an appeal against such a decision, under Section 37. Additionally, the considerations which apply to Section 34 would also apply to Section 37(ii)(b).”*

20. The present Appeal before this Court concerns with an order passed by the Learned Arbitrator under Section 17 of the Act, granting an interim measure in favour of the Respondent. Section 17 of the A&C Act, for the sake of reference, is reproduced as under: -

> *“17. [Interim measures ordered by arbitral tribunal. [Substituted by Act No. 3 of 2016 dated 31.12.2015.]*
>
> *(1) A party may, during the arbitral proceedings [***], apply to the arbitral tribunal-*
>
> *(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
>
> ***(ii) for an interim measure of protection in respect of any of the following matters, namely:-***
>
> ***(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;***
>
> *(b) securing the amount in dispute in the arbitration;*
>
> ***(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any***

***question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;***

*(d) interim injunction or the appointment of a receiver;*

***(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.***

*(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.]*

*17. Interim measures ordered by arbitral tribunal.- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.*

*(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).”*

(emphasis supplied)

21. Material on record indicates that the Respondent had approached the Arbitral Tribunal under Section 17 of the Act with the following prayers: -

> *"a. Pass an ex-parte ad-interim injunction restraining Respondent, agents, etc. from subletting or parting with the possession or creating a third party right;*
>
> *b. appoint a local commissioner to visit the suit premises and prepare a detailed report along with photographs and videography to ascertain the actual status and current structural condition of the suit property;*
>
> *c. direct the Respondents to pay use and occupation charges as per prevailing market rental value i.e. Rs. 8,50,000/- Per month, from 01.07.2024 till the handing over of physical possession of the property to the petitioner;*
>
> *d. Direct the Respondents to permit the Petitioner's bankers or their representatives, including from Aditya Birla Finance Limited and Cholamandalam Finance Limited to their banker, to visit and verify the suit property for valuation, technical, and verification purposes for the purpose of processing the Petitioner's loan application;*
>
> *e. Direct the Respondents to permit the Petitioner to inspect the suit property regularly as the rightful owner and former lessor."*

22. It is apposite, at this stage, to refer to the reasoning adopted by the Learned Arbitrator in granting the relief namely, for the past period i.e. 01.07.2024 to 31.01.2026, the rate was fixed at Rs.3,50,000/- per month, for the Ongoing Period i.e. 01.02.2026 onwards, the rate was increased to

Rs.4,00,000/- per month until the disposal of the arbitral proceedings and directions to pay balance differential of Rs.1,77,500/- per month for the 19 months where Appellants only paid Rs.1,72,500/-. The Learned Arbitrator was of the opinion that in the absence of any renewal agreement executed between the parties there was no right on the part of the Appellant to continue possession and, therefore, the continued occupation of the premises by the Appellant post expiry of the lease *prima facie* renders him liable to compensate the Respondent by way of user and occupation charges. Though the Learned Arbitrator had observed that the quantum of such charges can be decided only after leading evidence including material relating to comparable properties, location advantages, nature of use, and prevailing market conditions. Yet, the learned Arbitrator took note of the relevant terms of the independent Lease Deed dated 29.06.2021 in respect of the first floor of the same property wherein the rent has been structured with periodic escalation, reaching Rs. 3,30,625/- per month for the current period of 01.02.2026 to 31.01.2029. The Arbitral Tribunal was of the opinion that the powers under Section 17 of the Act is akin to those of a Court under Section 9 to grant efficacious interim measures and where there is a strong *prima facie* case and the balance of convenience lies in favour of granting interim relief, such relief ought not to be declined on technical considerations. The Arbitral Tribunal was of the opinion that if a strong *prima facie* case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments. The Tribunal, therefore, directed that the Appellant should pay user and occupation charges @ Rs. 3,50,000/- per month w.e.f. 01.07.2024 till

31.01.2026 and @ Rs. 4,00,000/- per month from 01.02.2026 till the disposal of the arbitral proceedings subject to adjustment of the money already paid.

23. The dispute between the parties primarily concerns with issues as to when did the terms of the Lease Deed come to an end, right of the Petitioner to operate from the Property in absence of any formal document showing extension of lease, unilateral payment of increased rent and the acceptance of the same by the Respondent and whether such acceptance of rent by the Respondent, if so, would have entitled the Petitioner to be in tenant by holding over.

24. The Learned Arbitrator, in the present case, without going into all these questions has directed the Appellant to pay a sum of Rs. 3,50,000 per month for the period from 01.07.2024 to 31.01.2026, Rs. 4,00,000 per month from 01.02.2026 until the disposal of the case and payment of differential arrears for the past period, totalling approximately Rs.33,72,500.

25. Section 17 of the Act itself provides that interim measure can be granted for protection of the subject matter of the arbitration. The manner of protection is given Section 17(1)(ii). Section 17(1)(ii)(a) gives power to the Tribunal to pass orders of preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement. Section 17(1)(ii)(b) gives power to the Tribunal to secure the amount in dispute in the arbitration. Section 17(1)(ii)(c) gives power to the Tribunal to pass interim measure relating to the detention, preservation or inspection of the subject-matter of the dispute in arbitration. Section 17(1)(ii)(d) gives power to the Tribunal to pass interim injunction or the appointment of a receiver. Section 17(1)(ii)(e) gives power to the Tribunal to pass any other interim

measure of protection as may appear to the arbitral tribunal to be just and convenient. A reading of Section 17 of the Arbitration Act makes it very clear that the purport of Section 17 is primarily to protect and preserve the subject-matter of arbitration. Section 17 cannot be enlarged to mean that it gives powers to the Tribunal beyond the scope of protection.

26. In the opinion of this Court, fixing rent for use and occupation over and above the agreed rent goes beyond the scope of Section 17 of the Act, as it cannot be said that it is for the purpose of protecting the Property. Merely because the period is over and the rent has not been fixed again, could not, *ipso facto*, have led to a conclusion that the Appellants are in unauthorized use of the Property.

27. In the opinion of this Court, the Arbitral Tribunal does not have the power to direct payment of even a single rupee to any party as an interim measure under Section 17 of the Act as it does not come within the definition of preservation or protection of the subject matter of the arbitration agreement. Even clause (e) under Section 17(1)(ii) which gives power to the Tribunal to pass any other interim measure of protection as may appear to the arbitral tribunal to be just and convenient cannot apply to the present case as enhancement of rent cannot be said to be a measure for either preservation or protection of the subject matter of arbitration. Till it is not finally decided as to whether the termination was proper or not, and whether the Appellants were entitled to continue to remain in the premises, there cannot be an adjudication of the amount to be paid over and above the mutually agreed rent as an interim measure. There must be a determination that the Appellants herein is an illegal occupants and, without ascertaining

and coming to this definitive conclusion, an Arbitral Tribunal cannot pass an order enhancing the rent as an interim relief.

28. In the opinion of this Court, the entire reasoning of the Learned Arbitrator on balancing equities becomes irrelevant and is beyond the scope of the powers exercised under Section 17 of the Act. The Impugned Order records that as long as the Appellant remained in physical possession of the commercial premises i.e., the Property, the Respondent was being deprived of the use and economic benefit of her property. Following this reasoning, the Learned Arbitrator had allowed the interim monetary arrangement, which it deemed necessary to compensate the Respondent during pendency of the proceedings. The Learned Arbitrator noted that the parties had already contemplated financial consequences for staying past the lease term. Clause 21 of the Lease Deed provides for liquidated damages equivalent to double the prevailing rent if the lessee failed to vacate, which provided a contractual foundation for directing charges higher than the initial Rs. 1,50,000/- per month. For the quantification of the amount, the Learned Arbitrator proceeded on the premise that a contemporaneous lease for the first floor of the same building served as a valid benchmark. He concluded that since the disputed premises i.e. the 2nd and 3rd floors included roof and terrace rights, it held a proportionally higher valuation than the first floor, which was being rented for approximately Rs.3,30,625/- per month.

29. This Court is of the view that the determination of the amount payable by the Appellants towards occupation of the premises after the expiry of the registered Lease Deed cannot, at this stage, be divorced from the underlying questions as to the legal character of the Appellants continued possession. The Learned Arbitrator has proceeded on the ground that, immediately upon

expiry of the Lease Deed on 30.06.2024, the Appellants became unauthorised occupant and that its continued possession thereafter could not be treated as a tenancy by holding over. However, this very premise is a matter of dispute between the parties and cannot be treated as an established fact without adjudication of the rights and conduct of the parties.

30. The question whether the Appellants possession of the Property after 30.06.2024 was unauthorised, or whether the circumstances disclose a case of holding over or continuation of the tenancy by consent, necessarily requires consideration of the conduct of the parties subsequent to the expiry of the Lease Deed. Such determination may involve examination of the communications exchanged between the parties, the acceptance or rejection of rent or other amounts, the conduct of the Respondent in relation to the continued possession of the Property, and other surrounding circumstances.

31. The mere existence of another lease in the same Property does not, by itself, establish the market rent of the premises in dispute. A comparable lease can undoubtedly constitute relevant evidence for determining market rent, but its evidentiary value would have to be tested by the parties by leading evidence and not at an interim stage to Section 17 of the Act.

32. This Court is conscious that, while considering an application for interim relief under Section 17 of the Act, an Arbitral Tribunal is not required to finally adjudicate the rights of the parties. An interim arrangement may, in an appropriate case, be made to balance the equities and prevent one party from deriving an undue benefit during the pendency of the proceedings. However, such power cannot be exercised by conclusively deciding disputed questions which constitute the very subject

matter of the final adjudication, particularly where the monetary liability is itself is matter of dispute.

33. It is well settled that the grant of interim measures under Section 17 of the Act is preservative in nature. In fact, even in a suit for eviction, the Courts under Order XXXIX Rules 1 and 2 of the CPC cannot increase the rent as an interim measure, and only after an eviction order has been passed, can it fix an amount that can be paid as an interim measure.

34. In the present case, it is stated by the Learned Senior Counsel for the Appellants that the Learned Arbitrator has invoked powers akin to Order XXXVIII Rule 5 of the CPC, in passing the Impugned Order. The principles governing the grant of relief under Order XXXVIII Rule 5 of the CPC have been succinctly elaborated by this Court in Indo Spirits v. Pernod Ricard India (P) Ltd., **2026 SCC OnLine Del 674** and the relevant observations are reproduced hereunder:

> *"27. With respect to the invocation of Order XXXVIII Rule 5 of the CPC, this Court is of the considered opinion that the jurisdiction to grant relief thereunder is extraordinary and drastic in nature. Such power is not to be exercised lightly or as a matter of course. It can be invoked only upon the applicant establishing, on the basis of cogent, credible, and proximate material, a real and imminent apprehension that the respondents are acting with a deliberate intent to obstruct or defeat the satisfaction of a prospective decree or award, by alienating, dissipating, secreting, or otherwise removing their assets beyond the reach of the judicial process.*
>
> *28. In Skypower Solar India (P) Ltd. v. Sterling and Wilson International FZE17, Division Bench of this Court has held interim protection akin to Order XXXVIII Rule 5 of the CPC can be granted only upon a*

*prima facie finding of a real and imminent risk of asset alienation or conduct intended to frustrate enforcement of a prospective award, and not merely on the existence of a prima facie case or balance of convenience, which is extracted as follows:*

> *"47. There is no finding (prima facie or otherwise) by the learned Single Judge that, if S&W prevails in the arbitral proceedings, it would be unable to enforce the arbitral award in its favour if the amounts as claimed are not secured. There is no allegation that Appellants 2 to 6 are alienating their assets and are acting in a manner that would frustrate the enforcement of an arbitral award that may be delivered in favour of S&W.*
>
> ****
>
> *49. We have carefully examined the impugned judgment. Whilst, the learned Single Judge has found that S&W has established a prima facie case and that the balance of convenience is also in its favour, there is no finding to the effect that Appellants 2 to 6 are alienating their assets or would do so and frustrate S&W's recourse to enforce the arbitral award if it prevails in the arbitral proceedings. There is no finding that absent an order for securing the amounts in dispute, S&W would be unable to enforce the arbitral award that may be made in its favour. The learned Single Judge had accepted that any change in the shareholding pattern of original Respondents 2 to 8 would have a bearing on the arbitration proceedings as well as the execution of the arbitral award. The observations to the said effect are contained in para 74 of the impugned judgment, which reads as under : (Sterling & Wilson International FZE v. Sunshakti Solar*

*Power Projects (P) Ltd., 2020 SCC OnLine Del 2414, SCC OnLine Del 74)*

> *"74. It is clear that under Section 9, the court has the power to issue interim directions to non-parties to arbitration agreement. Keeping in view the judgments referred to above, in my opinion, petitioner is right in its contention that if the shareholding pattern of respondents changes by transferring shares, there is likelihood of changes in the management, overall control and the decision-making power. This would have a significant bearing on the arbitration proceedings as well as the ultimate execution of the award. Thus, interim directions are required to be issued against Respondents 2 to 8. The judgments relied upon by respondents are distinguishable on the facts of this case and thus of no avail to them."*

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*63. The principle for granting orders under Order 38 Rule 5CPC are now well-settled. In Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302 : (2008) 1 SCC (Civ) 539, the Supreme Court had observed that the power under Order 38 Rule 5 are drastic and extraordinary powers and are required to be used sparingly and in accordance with the rule. The Supreme Court also observed that the purpose of Order 38 Rule 5 was not to convert an unsecured debt as a secured one. The object of Order 38 Rule 5 was to prevent any defendant from defeating the realisation of a decree that may ultimately be passed in favour of the plaintiff. The relevant extract of the said decision is set out below : (SCC p. 304, paras 4 and 5)*

*"4. The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realisation of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied that the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5CPC. It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well-settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.*

*5. The power under Order 38 Rule 5CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs, by obtaining orders of attachment before judgment and forcing the defendants for out of court settlements, under threat of attachment."*

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*70. The principles underlying the object of Order 38 Rule 5CPC are, as noticed earlier, well-settled. Such orders are required to be issued in case where the court is satisfied that the party has established a strong prima facie case and that the respondents are acting in a manner that would defeat the realisation of the decree. These principles must be equally satisfied for securing protective orders under Section 9 of the A&C Act, which are in the nature of orders under Order 38 Rule 5CPC."*

***(Emphasis supplied)***

*xxxx xxxx xxxx*

*33. With respect to the application of the well-settled 'triple test' governing the grant of interim injunctions, it is trite that the exercise of such jurisdiction is conditioned upon the satisfaction of three foundational*

*requirements namely, (i) the existence of a prima facie case; (ii) the balance of convenience tilting in favour of the applicant; and (iii) the likelihood of irreparable injury in the absence of interim protection. These jurisdictional preconditions cannot be presumed or invoked as a matter of course. They must be the subject of a conscious and reasoned judicial determination, founded upon an objective evaluation of the material placed on record.*

*34. The Hon'ble Supreme Court in Bloomberg Television Production Services India Pvt. Ltd. v. Zee Entertainment Enterprises Ltd.18 has underscored that the grant of interim relief must rest upon a careful and reasoned application of the aforesaid threefold test and not upon a mechanical or conclusory invocation thereof. The Court cautioned that a mere reproduction of submissions or precedents is insufficient; the adjudicatory authority must expressly analyse how each limb of the test stands satisfied on the facts of the case and furnish cogent reasons in support of its conclusion. Relevant paragraph of the said judgment has been extracted as under:*

> *"4. The threefold test of establishing : (i) a prima facie case, (ii) balance of convenience, and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits. However, this threefold test must not be applied mechanically [DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622, para 38], to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyse how the threefold test is satisfied. A cursory reproduction of the submissions and*

> *precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case."*
>
> *35. To augment, the Hon'ble Supreme Court in Arcelor Mittal (supra) has reiterated that these foundational principles are equally applicable in proceedings under Sections 9 of the A&C Act. By necessary extension, the same discipline in reasoning must inform the exercise of power under Section 17 of the A&C Act by an Arbitral Tribunal."*

35. In the opinion of this Court, the power exercised by the Learned Arbitrator is even beyond the scope of Order XXXVIII Rule 5 of the CPC as the present case does not concern a claim for recovery of an admitted debt or an undisputed sum of money. The very entitlement of the Respondent to the amount in question remains a matter to be adjudicated by the Learned Arbitrator. More importantly, even assuming that the Arbitral Tribunal was justified in exercising a power analogous to that contemplated under Order XXXVIII Rule 5 of the CPC for securing the amount in dispute, such power could only extend to securing the disputed amount and not to directing its payment to the Respondent. Even the Courts under Order XVIII Rule 5 of the CPC cannot direct the payment of money to one party but can only ask for the money to be deposited in Court.

36. Further, the Impugned Order does not disclose any circumstances as per which it can be concluded that if the use and occupation charges/Mesne profit are not paid at the interim stage, there is a likelihood of the execution of the final award to be infructuous. Nor is there any imminent or real risk disclosed in the Impugned Order that raises apprehension that the execution

of the final award would be rendered nugatory. The only reason given by the Learned Arbitrator is that if the amount is not granted, the Respondent would be deprived of the use and economic benefit of the Property whereas the Appellants would continue with the possession. However, this reasoning of the Learned Arbitrator is not in consonance with the strict parameters under Order XXXVIII Rule 5 of the CPC or under Section 17 of the Act.

37. In view of the above, this Court is of the view that the relief granted by the Learned Arbitrator appears to be final in nature so as to prejudice one party over the other even before a final award is passed.

38. This Court is consciously refraining from making any observations on the merits or facts that are disputed between the parties as the determination of the same particularly lies within the exclusive domain of the Learned Arbitrator. However, the Impugned Order read in totem leaves an impression that the relief granted by the Learned Arbitrator under Section 17 of the Act has traversed beyond the scope of relief that can be granted under the said provision and the quantification of rent has been done capriciously, rendering the Impugned Order unsustainable in law.

39. In light of the above, the present Appeal is allowed, and the Impugned Order dated 02.04.2026 passed by the Learned Arbitrator is set aside.

40. Accordingly, the present Appeal is disposed of, along with pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**AUGUST 31, 2026**
**VG**