HC-KAR

NC: 2026:KHC:48574-DB
COMAP No. 316 of 2026

CNR: KAHC010308572026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

COMMERCIAL APPEAL NO. 316 OF 2026

BETWEEN:

M/S. NIRMAN SONESTAA DEVELOPERS
NOS. 94/2, 3 AND 4, BELLANDUR VILLAGE,
VARTHUR HOBLI, BENGALURU BELLANDUR POST,
BENGALURU-560 037,
REPRESENTED BY ITS MANAGING PARTNER
B. GOVARDHANA CHARY

...APPELLANT

(BY SRI. SHIVARAMU H.C, ADVOCATE)

AND:

1. SRI. VENKATASWAMY REDDY
   SINCE DECEASED REP. BY HIS LRS.
   SMT. RATHI. I, W/O. M. INDRA KUMAR,
   D/O. LATE VENKATASWAMY REDDY
   AGED ABOUT 62 YEARS,

2. SRI. VINAY. I
   AGED ABOUT 42 YEARS,
   S/O. M. INDRA KUMAR,
   RESIDING AT NO.272, 5TH 'D' CROSS, 6TH MAIN,
   HAL 3RD STAGE, BANGALORE-560 075.

...RESPONDENTS

(BY SRI.V.VISHWANATH, ADVOCATE FOR C/R1 & R2;
(CP NO.14786/26 & 7560/26)
(AFTER FILING OF MAIN APPEAL))

THIS COMAP FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO ALLOW THE ABOVE APPEAL AND SET ASIDE THE ORDER DATED 16.03.2026 PASSED BY THE COMMERCIAL COURT, (CCH NO.89), BENGALURU IN COM.A.A.NO.74/2026, DISMISS COM.A.NO.74/2026 IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

An Arbitral Award Must Not Become a Paper Victory: The Fruits of Arbitration Cannot Be Allowed to Perish Before Execution.

An arbitral award is not merely a declaration of rights; it is intended to yield an effective and enforceable remedy. Until its enforcement, the Court may be called upon to preserve the subject matter of an award and protect the rights secured thereunder. Where further alienation of the subject matter threatens to place it beyond the reach of execution, interim protection becomes a step in aid of enforcement, ensuring that the successful party is not left with an award in hand but no effective means of realising its fruits.

This Commercial Appeal is filed calling in question the order dated 16.03.2026 passed by the LXXXVIII Additional City Civil and Sessions Judge, (Commercial Court), Bengaluru (CCH-89) (**'Commercial Court'**), in Com.A.A. No.74/2026, whereby the application filed by the present respondent under Section 9 of the Arbitration and Conciliation Act, 1996 (**'the Act'**), came to be allowed and the present appellant was restrained from alienating or creating encumbrances in respect of the properties in question for a period of three months or until filing of the execution petition. The Commercial Court further directed that, in the event the execution petition was filed within the said period of three months, the order would continue until conclusion of the execution proceedings.

Facts of the Case:

2. The present dispute germinates from proceedings arising out of a Joint Development Agreement dated 23.04.2011 (**'JDA'**) for development of the property described as the Schedule 'A' Property in the arbitral

proceedings. The dispute before the learned Sole Arbitrator concerned, inter alia, the entitlement of the legal heirs of late Sri B.N. Venkataswamy Reddy to the built-up area falling to his share under the JDA and the validity of the Supplemental Agreement dated 21.10.2012 purportedly executed between late Sri B.N. Venkataswamy Reddy and the appellant. The present respondents were Claimant Nos.1(a) and 1(b) before the learned Sole Arbitrator. Respondent No.1, who was Claimant No.1(a), is the daughter of late Sri B.N. Venkataswamy Reddy, while the respondent No.2 herein, who was Claimant No.1(b), is her son. The appellant herein was Respondent No.1 in the arbitral proceedings.

3. The arbitral proceedings culminated in an award dated 18.09.2025. Upon an appreciation of the material on record and the contentions raised, the learned Arbitrator concluded that the legal representatives of late Sri B.N. Venkataswamy Reddy (including respondent No.1) were collectively entitled to 42% of the total built-up area of the

Schedule 'A' Property, corresponding to 1,63,605 sq.ft., being the share to which the deceased was entitled under the JDA. The Supplemental Agreement dated 21.10.2012 purportedly executed between late Sri B.N. Venkataswamy Reddy and the appellant was held to be void, having been obtained by misrepresentation and fraud.

4. Having so held, the learned Arbitrator directed the appellant to hand over actual possession of 46,447 sq.ft. of built-up area, being the balance area out of the 1,63,605 sq.ft. found to be due, in equal proportion to the four daughters of late Sri B.N. Venkataswamy Reddy. The award contemplated that the appellant would issue individual notices by RPAD to the four daughters for this purpose. Furthermore, it was stipulated that if the appellant was unable to hand over the said area on account of non-availability, the appellant was directed to pay a sum of Rs.25,54,58,500/-, calculated at the prevailing market value of Rs.5,500/- per sq.ft., within two

months from the expiry of the period stipulated for handover.

5. Before adverting to the facts and circumstances which led to the institution of the proceedings under Section 9 of the Act, it would be apposite to clarify that the findings recorded in the arbitral award on the merits of the dispute are not in issue in the present proceedings. The arbitral award is noticed herein only to the extent necessary to appreciate the nature of the relief granted thereunder and the circumstances in which the respondent sought interim protection before the Commercial Court.

6. Following the passing of the arbitral award, the appellant issued a notice dated 16.10.2025 to Smt.Kamakshi K., who was Respondent No.2 in the arbitral proceedings. In the said notice, the appellant stated that most of its share of the constructed area had already been conveyed and that the area remaining was less than the area required to be handed over to the heirs of the

deceased Sri B.N. Venkataswamy Reddy. The appellant further stated that it would pay the amounts equivalent to the super built-up area allotted to the owners' share in terms of the award and, consequently, that there was no question of handing over any apartments forming part of the builder's share. The relevant portion of the notice, as extracted by the Commercial Court, reads as follows:

> *"We wish to inform you that, as we have already conveyed most of our share of constructed area and the area remaining is less than the area to be handed over to the heirs of the deceased owner Sri Venkataswamy Reddy, We will be paying the amounts equivalent to the super built area allotted to the owners share, as per award passed by the Hon'ble Arbitrator, therefore, the question of handing over any apartments of the builders share does not arise.*
>
> *This is without prejudice to our right to challenge the award passed by the Hon'ble Arbitrator."*

7. The aforesaid notice, coupled with the apprehension that the flats forming part of the subject matter of the award may be further alienated, led the present respondents to approach the Commercial Court under Section 9 of the Act by filing Com.A.A. No.74/2026. It was contended that the appellant had already sold 175

flats, measuring in all 2,25,759 sq.ft., and that, if the remaining 31 flats, measuring 50,697 sq.ft. and identified in Schedule 'B' to the said application, were also alienated, the respondents and the other legal representatives of late Sri B.N. Venkataswamy Reddy would be rendered remediless in securing the benefit of the award.

8. This application came to be opposed by the appellant herein. It was contended that all the legal representatives of deceased Sri B.N.Venkataswamy Reddy had not been arrayed as applicants and that the remaining legal representatives could have been arrayed as respondents. It was further contended that the respondents had not sought enforcement of the arbitral award. According to the appellant, the notice dated 16.10.2025 had been issued in compliance with the award. It was contended that an application under Section 9 of the Act, could only be in aid of enforcement of the award and that, in the absence of any execution proceedings, the application was liable to be rejected. It was further

contended that, except six apartments bearing Nos. F-15, S-16, S-20, F-45, T-56 and T-62, the remaining flats have already been sold.

Reasoning and order of the Commercial Court:

9. The Commercial Court, upon consideration of the material on record, took note of the fact that, during the arbitral proceedings, the appellant had been restrained from alienating the share of late Sri B.N. Venkataswamy Reddy. It further noted that, notwithstanding the same, the appellant had stated that all the flats had already been sold aside from six flats bearing Nos. F-15, S-16, S-20, F-45, T-56 and T-62. The Commercial Court observed that the appellant had not furnished the particulars or status of the other flats identified in Schedule 'B' of the application.

10. The Commercial Court found the notice dated 16.10.2025 issued to Smt.Kamakshi K. to be vague, omnibus and lacking with material particulars. It observed that the said notice had been issued in such a manner that

the respondent has no regards to the specific directions issued by the Arbitral Tribunal. Ultimately, the Commercial Court observed that when the Arbitral Tribunal is the creature of contract, the parties are expected to obey the verdict of the learned Arbitrator. It took note of the specific direction of the Arbitral Tribunal that, if the appellant was unable to hand over the built-up area of 46,447 square feet to the legal representatives of deceased Sri B.N. Venkataswamy Reddy due to non-availability, it would be required to compensate them at the rate of Rs.5,500/- per sq. ft. The Commercial Court observed that, despite the said direction, the appellant had simply issued the notice dated 16.10.2025 without furnishing the material particulars of the flats sold and unsold.

11. The Commercial Court further took note of certain sale deeds produced by the respondents and observed that the same had been executed by the appellant subsequent to the arbitral award. It consequently found that the apprehension of the

respondents that their entitlement to the built-up area would be alienated was well founded.

12. The Commercial Court was also of the view that invocation of Section 9 after the passing of the award should be in aid of and in assistance to the execution proceedings. It noted that the respondents had not yet initiated execution proceedings. However, having regard to the fact that the award had been passed on 18.09.2025 and that the parties had been pursuing their cause for a considerable period, the Commercial Court observed that the respondents might require reasonable time to file the execution petition. It further observed that, if the flats were sold by the time the execution proceedings were commenced, legal injury would be caused to the respondents and they would not be able to execute the award rendered in their favour.

13. The Commercial Court also considered the decision of the High Court of Calcutta in ***Rakesh Kumar***

Jindal and Anr. v. Anoop Kumar Jindal and Ors.[1] relied upon by the appellant. The said decision was found to be distinguishable on facts. The Commercial Court, accordingly, held that the said decision was not applicable to the facts and circumstances of the present case.

14. In the aforesaid circumstances, the Commercial Court allowed the application filed by the respondents under Section 9 of the Act and restrained the appellant from alienating or creating any encumbrance over the flats identified in Schedule 'B' to the said application, for a period of three months or until filing of the execution petition. It was further directed that, if the execution petition was filed within the said period of three months, the order would continue until conclusion of the execution petition.

[1] 2025 SCC OnLine CAL 9252

Grounds in Appeal:

15. Aggrieved by the impugned order, the appellant has preferred the present appeal, contending that the Commercial Court failed to appreciate that the respondents had filed the application under Section 9 of the Act, seeking a restraint order until disposal of the proceedings initiated by the appellant challenging the arbitral award in Com.A.P. No.174/2025. It is contended that, such a course, particularly when the said proceedings are still pending, demonstrated that the respondents did not intend to pursue enforcement of the arbitral award and that the application under Section 9 of the Act was, therefore, not maintainable. The appellant further contends that the award had been rendered in favour of the four daughters of deceased Sri B.N. Venkataswamy Reddy and that the respondents could have sought relief only in respect of their respective one-fourth share in the built-up area.

16. We have heard the arguments of Sri.H.C.Shivaramu, learned Counsel for the appellant, Sri.V.Vishwanath, learned Counsel for the respondents.

17. Learned counsel for the appellant strongly urged that the Commercial Court failed to appreciate that the notice dated 16.10.2025 had been issued specifically to Smt. Kamakshi K. and not to the respondent No.1 and, therefore, the respondent No.1 could not have sought an order of injunction on the basis of the said notice. It was further submitted that the award had remained un-enforced for more than six months and that the application under Section 9 of the Act could not, therefore, be regarded as an application seeking an interim measure in aid of the award and was not maintainable.

18. Per contra, learned counsel appearing for the respondents supported the impugned order and contended that the Commercial Court had rightly exercised its jurisdiction under Section 9 of the Act. It was submitted

that the apprehension of the respondents regarding further alienation of the flats was justified, particularly in view of the sale deeds executed by the appellant subsequent to the passing of the arbitral award and that the impugned order was necessary to protect the respondents' entitlement under the award.

19. Having heard the learned counsel appearing on both sides and on perusal of the material on record, the questions that arise for our consideration are,

(i) *Whether the respondents had made out a case for interim protection under Section 9 of the Act?*

(ii) *Whether the Commercial Court was justified in restraining the appellant from alienating or creating encumbrances over the flats in question?*

Reasons and Conclusion:

20. Section 9 of the Act confers jurisdiction upon the Court to grant interim measures of protection at

different stages of the arbitral process. Section 9(1) provides that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the Court for the measures contemplated therein. Clause (ii)(c) of Section 9(1), *inter alia*, enables the Court to order 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. The provision further empowers the Court to grant such measures as may be necessary or expedient for securing the subject matter of the dispute and protecting the interests of the parties.

21. The scope of the jurisdiction under Section 9 of the Act has been considered by the Supreme Court in ***Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited[2].*** While considering the

[2] (2022) 20 SCC 178

circumstances in which interim protection may be granted, the Apex Court observed thus:

> *"Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition."*

22. The Court is required to consider the material on record to determine, whether the applicant has a good *prima facie* case and whether the balance of convenience warrants protection. The requirement of reasonable expedition is also to be considered in the facts and circumstances of each case. The power under Section 9 is, at the same time, required to be exercised with due regard to the nature of the relief sought and the object of preserving the efficacy of the arbitral process.

23. In the present case, the respondents' apprehension cannot be characterised as a mere apprehension unsupported by the records. The Commercial Court examined the arbitral award and the material placed before it. The award directed the appellant to hand over the balance built-up area of 46,447 sq. ft. within the stipulated period. Significantly, the award itself contemplated the contingency of the said built-up area being unavailable and in that event, directed the appellant to pay its monetary value at the rate of Rs.5,500/- per square feet. Thus, the award itself recognised the significance of availability of the built-up area for giving effect to the relief granted in favour of the respondents.

24. The material before the Commercial Court further disclosed that, notwithstanding the proceedings before the Arbitral Tribunal and the directions operating in relation to alienation of the concerned property, the appellant had executed sale deeds in respect of flats even after the arbitral award came to be passed. The

subsequent alienations were not, therefore, a matter of mere conjecture. They constituted material from which the Commercial Court was entitled to assess the apprehension expressed by the respondents regarding further alienation.

25. The conduct of the appellant subsequent to the award assumes significance in this context. By the notice dated 16.10.2025 issued to Smt. Kamakshi K., the appellant plainly stated that most of its share of the constructed area had already been conveyed and that the area remaining was less than the area required to be handed over to the heirs of deceased Sri. B.N.Venkataswamy Reddy. The appellant thereafter stated that it would pay the amount equivalent to the super built-up area forming part of the owners' share and that the question of handing over apartments from the builder's share did not arise. The notice, however, did not furnish particulars of the flats which had been sold or those which continued to remain available.

26. It was only thereafter, during the proceedings before the Commercial Court, that the position regarding the flats which remained unsold came to be properly understood. At the same time, the appellant had not furnished sufficient particulars to enable the Court to ascertain the status of the other flats forming part of the subject matter of the application. In these circumstances, the apprehension of the respondents that further alienation may prejudice their ability to obtain the benefit of the award could not be regarded as speculative.

27. The circumstances of the present case must also be viewed in the context of the relief actually granted by the Commercial Court. The Court did not proceed to determine the title or final entitlement of the respondents to each individual flat nor did it grant the respondents the substantive relief awarded by the Arbitral Tribunal by way of an order under Section 9. The order was directed towards preserving the identified flats from further alienation for a limited period so as to enable the

respondents to take appropriate steps for enforcement of the award.

28. The contention of the appellant that the respondents could seek protection only in respect of their respective one-fourth share also cannot be accepted. The award quantified the entitlement in terms of built-up area and did not identify the particular flats constituting the balance 46,447 sq.ft. In the absence of such identification, confining the interim protection to particular flats corresponding to the respondents' respective shares would not have been practicable and may have rendered the protection illusory. The question before the Commercial Court was not to determine the allocation of individual flats between the beneficiaries of the award, but whether the subject matter required preservation so as to ensure that the relief granted under the award could be effectively obtained during its execution.

29. Applying the aforesaid principles, we are of the view that the respondents had established a sufficient basis for interim protection. The award had already crystallized their entitlement to the balance built-up area. The appellant had, even after the award, dealt with flats forming part of the concerned property. The notice dated 16.10.2025 did not disclose the particulars of the flats already alienated or those remaining unsold. The possibility of further alienation was, therefore, not merely theoretical. In the facts of the case, the material disclosed a real and reasonable apprehension that further alienation may diminish the pool of property from which the respondents' entitlement under the award could be worked out.

30. The circumstances also satisfy the requirement of balance of convenience. If the remaining flats were permitted to be alienated and the respondents ultimately succeeded in obtaining enforcement of the award, the realisation of the balance built-up area could become

considerably more difficult. The Commercial Court merely imposed a temporary restraint for a specified period and permitted the restraint to continue only if execution proceedings were instituted within that period. The nature and duration of the restraint were thus calibrated to the purpose for which protection was sought.

31. The reliance placed by the appellant in the absence of an execution petition does not alter this conclusion. The question under Section 9 is whether interim protection was warranted on the material existing when the application was considered. The mere fact that execution proceedings had not been instituted by that point of time could not, by itself, erase the circumstances giving rise to the apprehension of further alienation and the remedies flowing therefrom.

32. The contention of the appellant that the respondents, by seeking a restraint order for until disposal of Com.A.P.No.174/2025 before the Commercial Court,

Bengaluru, demonstrated that they did not intend to enforce the arbitral award, also cannot be accepted. The purpose of the interim protection was to preserve the efficacy of the award during the intervening period. The respondents were seeking to ensure that the property remained available so that the relief granted under the award would not be rendered ineffective by subsequent alienations. An intention to abandon enforcement cannot be inferred merely from the fact that the respondents sought limited protection before initiating or completing execution proceedings.

33. The present case is also not one where the respondents had remained inactive or had slept over their rights. The respondents had pursued the arbitral proceedings and had obtained the award dated 18.09.2025. They thereafter approached the Commercial Court upon the appellant issuing the notice dated 16.10.2025 and in the backdrop of the subsequent alienations brought on record. The application under

Section 9 was thus founded upon circumstances which arose after the award and upon a specific apprehension regarding further alienation of the property.

34. The reliance placed by the learned counsel for the appellant on the decision in ***Rakesh Kumar Jindal (supra)***, is misplaced. The said decision dealt with the question of whether proceedings under Section 9 could be invoked to adjudicate a fresh claim requiring determination of the respective rights and obligations of the partners. The factual and legal context therein is materially different from the present case. In the present case, the respondents do not seek adjudication of any fresh claim or determination of rights and obligations beyond those already crystallized under the arbitral award. The relief sought is confined to preservation of the subject matter to secure the efficacy of the award pending its enforcement. Such a measure falls within the scope of the jurisdiction contemplated under Section 9 of the Act. The said

decision, therefore, does not advance the case of the appellant.

35. Viewed in this context, the grounds urged by the appellant do not displace the findings recorded by the Commercial Court on the existence of a prima facie case, the reasonable apprehension of further alienation, the balance of convenience and the necessity of limited interim protection. The fact that the notice dated 16.10.2025 was addressed to Smt. Kamakshi K. and not to the respondent No.1 does not, by itself, render the apprehension of the respondents illusory when the notice disclosed the appellant's stated position regarding the availability of the constructed area and the record also disclosed subsequent alienations by the appellant.

36. The Commercial Court has, in our view, upon consideration of the relevant material, exercised the jurisdiction vested in it under Section 9 of the Act and has moulded the relief in a manner proportionate to the

circumstances. We find no error warranting interference in the instant appeal.

Accordingly, the appeal is ***dismissed.***

The order dated 16.03.2026 passed by the LXXXVIII Additional City Civil and Sessions Judge, (Commercial Court), Bengaluru (CCH-89) in Com.A.A. No.74/2026, is hereby confirmed.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 2 Sl No.: 1