Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4095 OF 2016
(ARISING OUT OF SLP(C) NO.10868/2016)
(@ SLP(C).....CC 6652/2016)

Rajesh Verma Appellant(s)

VERSUS

Ashwani Kumar Khanna Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Delay in filing special leave petition is condoned. Leave granted.

2) This appeal is filed against the final judgment and order of the High Court of Delhi at New Delhi

dated 03.12.2015 and 19.02.2016 in Arbitration Petition No. 434 of 2015 and I.A. No. 754 of 2016 in Arbitration Petition No. 434 of 2015 respectively whereby the learned Single Judge of the High Court allowed Arbitration Petition No. 434 of 2015 and dismissed I.A. No. 754 of 2016 in Arbitration Petition No. 434 of 2015 seeking change of the named arbitrator.

3) In order to appreciate the short issue involved in the appeal, it is necessary to state few relevant facts.

4) The appellant is an owner/landlord of the shop measuring 153.58 sq. feet situated at 1729, Gali No. 5, Govind Puri Extension, Kalkaji, New Delhi-110019 whereas the respondent was the appellant's tenant of the shop in question at a monthly rent of Rs.175/- since July 1977.

5) On 31.10.2014, the appellant and the respondent claimed to have entered into an agreement whereby it was *inter alia* agreed that the appellant on

respondent's vacating the shop would demolish the shop and construct the new one in its place on or before 31.03.2015 and then sell the new shop to the respondent for a total consideration of Rs.42,00,000/-. The agreement further stipulated that the respondent has paid a sum of Rs.32,00,000/- by way of advance to the appellant in cash towards the sale consideration and balance amount of Rs.10,00,000/- was to be paid by the respondent to the appellant at the time of execution of the sale deed. Clause 14 of the agreement contained arbitration clause for making reference to the sole arbitrator in the event of any dispute arising between the parties in relation to the agreement in question.

6) The disputes arose between the parties in relation to implementation of the terms of the agreement, which led to exchange of notices between them by making allegations and counter allegations by both against each other regarding committing of

breaches of the agreement. Eventually, the respondent (tenant) filed an arbitration petition being Arbitration Petition No. 434 of 2015 under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") before the Delhi High Court (Single Judge) out of which this appeal arises praying therein for appointment of sole arbitrator for resolving the disputes which had arisen between them. It was *inter alia* alleged that since Clause 14 of the agreement provided for appointment of sole arbitrator for deciding the disputes arising out of the agreement between the parties and when disputes have arisen between them, the matter should be referred to the sole arbitrator for his decision as provided in the agreement. The arbitration petition was contested by the appellant (owner/landlord) as non-applicant by denying the allegations made in the petition. However, the learned Single Judge by order dated 03.12.2015 allowed the petition and appointed one Shri Ashok Chhabra,

Advocate as sole arbitrator to decide the disputes. It is against this order of the learned Single Judge, the owner/landlord has filed this special leave to appeal.

7) Heard Mr. Praveen Chaturvedi, learned counsel for the appellant and Mr. Vivek Sharma, learned counsel for the respondent.

8) Mr. Praveen Chaturvedi, learned counsel for the appellant, urged two points in support of his submission. In the first place, he urged that the learned Single Judge while allowing the petition exceeded his jurisdiction under Section 11 of the Act because he virtually proceeded to decide the main disputes itself by recording findings on such issues in Paras 9 and 10 of the impugned order. It was his submission that the findings recorded in Paras 9 and 10 and all such observations made in the impugned order, which touched the merits of the controversy, should, therefore, be set aside leaving the arbitrator to decide all such disputes in accordance with law in

arbitration proceedings on its merits depending upon the stand taken by the parties before the arbitrator.

9) His second submission was that the learned Single Judge having allowed the petition should have sought party's consent for nominating the arbitrator and in any case, according to learned counsel, any retired judge would have been more preferable for appointment to act as an arbitrator in place of any lawyer.

10) Learned counsel for the respondent, however, supported the impugned order and urged that no interference is called for in the impugned order.

11) Having heard the learned counsel for the parties and on perusal of the record of the case, we find some force in the submissions urged by learned counsel for the appellant.

12) We have perused the impugned order and find that in Paras 9 and 10, the learned Single Judge has elaborately discussed the issues touching the merits of

the controversy relating to the agreement. In our considered opinion, a discussion much less with such elaboration on factual issues was wholly uncalled for and should not have been made. Indeed, it was not necessary for the learned Single Judge to have recorded any finding on merits while making reference to the arbitrator under Section 11 of the Act.

13) It is a settled principle of law that jurisdiction of Court under Section 11 of the Act is limited and confine to examine as to whether there is an arbitration agreement between the contracting parties and, if so, whether any dispute has arisen between them out of such agreement which may call for appointment of arbitrator to decide such disputes.

14) Once it is held that disputes had arisen between the parties in relation to agreement which contained an arbitration clause for resolving such disputes, the Court should have made reference to the arbitrator leaving the parties to approach the arbitrator with

their claim and counter-claim to enable the arbitrator to decide all such disputes on the basis of case set up by the parties before him. In this case, we find that the learned Single Judge did exceed his jurisdiction on this issue and hence interference to this extent is called for.

15) We, accordingly, observe that the arbitrator while deciding the disputes between the parties in arbitration proceedings would not, in any manner, be influenced by any finding, observations made by the learned Single Judge in the impugned order and nor would make any reference of the findings while deciding the case.

16) Now so far as the appointment of sole arbitrator made by the learned Single Judge is concerned, in view of the reservation expressed by the appellant regarding the choice of an advocate arbitrator by the High Court, we feel that it is just and proper that a

retired Judge should be appointed in his place as an arbitrator to resolve the disputes.

17) We, accordingly, appoint Shri Justice M.L. Mehta (Rtd.) as the sole arbitrator to decide the disputes, which have arisen between the parties in relation to the agreement in question. The arbitrator would be at liberty to settle the terms for deciding the dispute such as fees and expenses etc.

18) Needless to say, the arbitration proceedings be completed expeditiously.

19) In the light of foregoing discussion, the appeal succeeds and is allowed in part. Impugned order is modified to the extent indicated above.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
April 19, 2016.