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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 10, 2009

Date of Order: August 13, 2009

+OMP 399/2005

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13.08.2009

Rajinder Kumar Gupta

...Petitioner

Through: Mr. Pankaj Singh, Advocate with petitioner-in-person

Versus

Escorts Securities Ltd.

...Respondent

Through: Mr. Ajay Talesara, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ("the Act", for short), the petitioner has assailed an award dated 1st August 2005 passed by the learned arbitral tribunal consisting of three members. The arbitral tribunal held that the claim of applicant was barred by limitation and the invocation of arbitration clause itself was beyond the period of six months, as prescribed under the Rules of National Stock Exchange.

2. It is an undisputed fact that the petitioner had a dispute with respondent No.1 regarding balance due amount. The letter dated 11th August 2000 was written by respondent no.1 showing debit balance of Rs.1,63,70,518.19 in the account of petitioner. The petitioner had mortgaged some of his property with the respondent and the respondent sold the property and adjusted the sale amount and wrote another letter dated 6th September 2000 showing reduced debit balance of Rs.76,20,419.15. The petitioner replied to the respondent disputing the debit balance on 27th

September 2000 itself. It is clear that the dispute between the parties arose in September 2000. Respondent invoked arbitration clause under the byelaws of National Stock Exchange on 31st August 2003 by sending an application to Mumbai Office. The arbitral tribunal observed that in view of Chapter IX (Arbitration) of Byelaws of National Stock Exchange, the limitation period for reference of claims and differences or disputes was six months. Since no dispute between the parties was referred within six months, the reference of dispute was barred by time. The learned tribunal also went on to observe that the claim of the petitioner was even otherwise barred by limitation when the reference was made to the arbitral tribunal.

3. It is not disputed by the petitioner that the period of limitation for invocation of arbitration clause was six months. He, however, stated that respondent no.1 started another arbitration through a private arbitrator and the petitioner, therefore, could not approach the arbitral tribunal in terms of Byelaws of National Stock Exchange. This plea of petitioner must fail because it is the petitioner's own case that the petitioner did not submit to the jurisdiction of the private arbitrator and objected to his jurisdiction and stopped attending the arbitration proceedings. In view of this conduct of petitioner, it cannot be said that the period of limitation could stop running in this case. The arbitral tribunal, therefore, rightly observed that the reference itself was barred by limitation and the claim of petitioner was also barred by time. I find no infirmity in the award passed by learned arbitral tribunal. This objection petition is hereby dismissed. No orders as to costs.

August 13, 2009
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SHIV NARAYAN DHINGRA J.