

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

Date of Reserve: 24.4.2009
Date of Order: 18th May, 2009

OMP No. 461/2007

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18.5.2009

M/s Harvinder Singh & Co.

... Petitioner

Through: Mr. Sandeep Sharma, Advocate

Versus

**National Building Construction Corporation Ltd.
& Ors.**

... Respondents

Through: Mr. Manoj Kumar Das, 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

By this petition under Section 14 of the Arbitration & Conciliation Act, 1996, the petitioner has prayed for terminating the mandate of Mr. Amitabha Basu, respondent no.2 (Arbitrator), and appoint an independent Arbitrator in his place for conducting the arbitration proceedings and give award.

2. The contention of the petitioner is that to adjudicate the dispute raised by the petitioner, the appointing authority vide letter dated 26.12.2002

appointed Shri A.K.Gupta, Dy. General Manager of respondent no.1 as sole Arbitrator. From 2002 till 2005 Mr. A.K.Gupta did just nothing except giving adjournments and the petitioner was compelled to move an application under Section 14 of the Act before this Court being OMP No. 293/2005 seeking removal of the Arbitrator. This Court vide order dated 22.1.2007 observed that since the proceedings at that time were pending before Shri A.Basu ED (Technical), a new Arbitrator, it would not be appropriate to interfere with the proceedings and this Court issued directions to the Sole Arbitrator to act with dispatch and to conclude the arbitration proceedings not later than 08 months from the date of the order. It is stated that Mr. A.Basu did not continue proceedings in the spirit of the orders. The petitioner vide letter dated 8.2.2007 requested Mr. A.Basu to commence the proceedings in view of deadline set by this Court. Mr. A.Basu fixed date of hearing as 26.2.2007 and on that day recorded that since complete record had not been received from the earlier Arbitrator so schedule of hearing would be fixed after receipt of record. Both the parties, however, were directed to submit authority letter in favour of their presenting officials and their counsel latest by 15.3.2007. The requisite authority letter was submitted by the petitioner on 6.3.2007 however, no hearing was fixed by the respondent despite submitting authority letter by the counsel. The petitioner again requested the respondent vide letter dated 1.5.2007 to conduct early hearing but with no effect. Thereafter, the learned Arbitrator wrote a letter to petitioner (received by petitioner on 11.8.2007) telling the petitioner to file

written notes of arguments on or before 27.8.2007 to enable the Arbitrator to pass an award within 08 months. The petitioner submitted that such an attitude/conduct of respondent was totally illegal and against the principles of natural justice. The learned Arbitrator wanted to directly pass award without conducting any other proceeding. The claim of the petitioner was of Rs.1.7 crore and the respondent was sitting prettily on the matter with the petitioner looking helpless. It is stated that the mandate of the Arbitrator who had not complied with the orders of the Court and had not proceeded with the arbitration should be terminated and an independent Arbitrator should be appointed.

3. It is apparent from the record that the arbitration proceedings were initiated by the petitioner in 2002, we are 7 years hence after an initiation of the arbitration proceedings. The sole aim of the arbitration is that parties get quick settlement of their commercial disputes and the very purpose of the arbitration stands defeated with this attitude of the Arbitrator. The earlier Arbitrator just kept on giving adjournments and the second Arbitrator did not fix the case on the ground that the record was not received from the earlier Arbitrator and then asked the parties to file written synopsis/arguments without even conducting proceedings. Both the Arbitrators belonged to the same department and if the second arbitrator wanted to call for record from the first Arbitrator it would not have taken days, or weeks and the Arbitrator just by making a telephone call or sending any messenger would have got the arbitration record. If he was still

facing any difficulty in procurement of arbitration record, he should have informed the party for making an arbitration application before the Court summoning the arbitration record from the earlier Arbitrator in view of the attitude of the Arbitrator. It is apparent that the Arbitrator in this case had not acted in accordance with the law and in accordance with spirit of the order. The order did not require the Arbitrator to announce the award without proceedings. There is no reason for the Arbitrator to ask the claimant directly to file written arguments without having led evidence by giving up his right to lead evidence.

4. Under Section 14 of the Arbitration & Conciliation Act, the Court has power to terminate the mandate of the Arbitrator, if the Arbitrator fails to act without undue delay for any reasons. Keeping in view, the manner in which the two departmental Arbitrators have proceeded in this case one after another, the matter has not been adjudicated despite passing of around 7 years. I consider that it is a fit case where the mandate of the present Arbitrator should be terminated and the Court should appoint another independent Arbitrator. I, therefore appoint Mr. D.S.Pawaria, retired ADJ (Mobile No. 9810433390) as Arbitrator in this case. He shall fix his fees in consultation with parties. Parties shall appear before Mr. D.S.Pawaria on 4th June, 2009. Mr. A.Basu and Mr. A.K.Gupta, Arbitrators are directed to send all arbitration record available with them to Mr. D.S.Pawaria before that day. The respondent in this case shall also see to it that the arbitration record reaches the new Arbitrator before the date

fixed. The Arbitrator shall endeavour to pass the award within a period of four months from the date of first appearance of the parties.

A copy of this order be sent to Mr. D.S.Pawaria, retired ADJ.

May 18, 2009
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SHIV NARAYAN DHINGRA, J.