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

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+ **FAO(OS) 307/2009**

ASHWANI KHURANA

..... Appellant

Through Mr. Sanjeev Puri, Sr. Adv. with Mr.
Rohit Puri, Adv.

versus

RAVI GOEL & ORS.

..... Respondents

Through Mr. Rakesh K. Khanna, Sr. Adv. with Mr.
Devender Grover, Adv. for R-1 to R-3 and R-5.
Mr. Arun Vohra and Mr. Sanjeev Sindhvani,
Advs. for
R-4(a) to R-4(c).

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

ORDER

03.09.2009

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This appeal arises out of the order dated 15.5.2009 passed by S.N. Dhingra, J. in OMP No. 696/2008. By the order under appeal the application under Section 9 of the Arbitration & Conciliation Act, 1996 has been dismissed by S.N. Dhingra, J. The contention of the appellant is that the arbitration proceedings between the parties are pending before the sole arbitrator Justice V.S. Aggarwal (Retd.) and the claim of the appellant against the respondents is worth several crores of rupees. The respondents have also filed counter claim against the appellant. While the appellant has provided security as directed by the court to protect the interests of the respondents, the respondents have not provided security to protect the interest of the appellant. The learned single Judge held that the parties had arrived at a compromise in respect of the securities and the same has been recorded by the Division Bench vide order dated 16.5.2008 passed in

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FAO(OS) No. 184/2008 and considering that the issues of security stands finally settled by mutual consent of parties, the appellant is not entitled to any relief.

2. The learned counsel appearing for the appellant contended before us that the settlement recorded in FAO(OS) No. 184/2008 was only with regard to security that could be provided by the appellant during the arbitral proceedings. The learned single Judge fell in error in not appreciating the order passed by the Division Bench in FAO(OS) No. 184/2008 in correct perspective. The settlement does not cover the issue relating to security to be provided by the respondents. We find absolutely no merit in the contention of the learned counsel. The order relating to the security was passed by the sole arbitrator vide his order dated 30.1.2007 whereby either party i.e. claimant / respondents were directed to furnish security to the satisfaction of the arbitrator to the tune of Rs.5 crores. The respondent Nos.1 to 3 filed an appeal being OMP No. 139/2007 under section 37 of the Arbitration and Conciliation Act to set aside the order dated 30.1.2007. The respondent Nos. 4(a) to 4(c) also filed OMP No. 196/2007 under section 9 of the Arbitration and Conciliation Act seeking direct impleadment of all the 16 companies of the present appellant. In FAO(OS) No. 184/2008 the settlement between the parties was recorded vide order dated 16.5.2008 in the following terms :

“..... Parties have reached a settlement regarding the security to be furnished by the respondent (Ashwani Khurana) during the arbitral proceedings and till the award is tendered. The respondent (Ashwani Khurana) agreed to furnish the following properties :

(1)

(2)

Parties have also agreed for the sale of the mutual funds and the shares belonging to the firm M/s K & Co. The shares and mutual funds will be sold through both the counsel jointly within a week It is agreed that this order finally settles the issues of security pending the disposal of arbitration proceedings between the parties."

(emphasis supplied)

3. In view of the above settlement OMP No. 139/2007 filed by the respondents challenging the order of the sole arbitrator dated 30.1.2007 was withdrawn. We are satisfied that all the disputes relating to the security were mutually settled by the parties, which has been recorded by the Division Bench in FAO(OS) No. 184/2008. We, therefore, do not see any reason to interfere with the order of the learned single Judge. The appeal is dismissed.

VPS Shah
CHIEF JUSTICE

Man Mohan
MANMOHAN, J

SEPTEMBER 03, 2009

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