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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) 318/2013
CM APPL.10673/2013

P.L.KALRA

..... Appellant

Through: Mr. Neeraj Jain, Advocate.

versus

BRAHAM DUTT SAINI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 17.07.2013

CM APPL.10673/2013 (exemption)

Allowed, subject to just exceptions.

FAO (OS) 318/2013

The present appeal is directed against the order of a learned Single Judge dated 31.05.13 whereby the application under Section 11 (6) for appointment of an Arbitrator is declined. The learned Single Judge relied upon the conditions of the contract and held that notice of arbitration in accordance with law had not been given by the appellant. The impugned order also relied upon the decision of the Court reported as *Civtech Engineers Pvt. Ltd. v. M.N. Securities (P) Ltd.* (Arbitration Petition No.93/2010).

It is urged by the appellant that the learned Single Judge overlooked material facts involving that the notice in terms of Clause-14 had not been issued. He relied upon the letter dated 2.4.2011 and submitted that a fair reading of the document would indicate that in fact that dispute had been referred to and the demand has to be reasonably construed to appointment an Arbitrator.

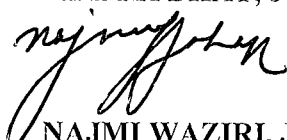
The appellant had invoked the Arbitration clause contained in an agreement between the parties which led to appointment of an Arbitrator on an earlier occasion.

This culminated in an Award dated 23.11.2007 whereby the respondent was directed to vacate the premises and also pay arrears of rent and damages for use and occupation of the premises till the date of their Award. The respondent preferred a Section 34 objection which was dismissed; his appeal too was unsuccessful. Concededly, the appellant had made a composite claim with regard to the relief of decree for possession and mesne profits/damages for use and occupation of the premises till payment. The Arbitrator, however, restricted the grant of damages till the date of the Award. The appellant at that stage could have articulated the grievance by preferring objections under Section 34 of the Arbitration and Conciliation Act. He, however, chose not to do so. The subsequent non-compliance of the Award and handing over of the possession after two years' delay which is sought to be highlighted as a subsequent cause of action, in the opinion of the Court, was a matter which could have been agitated under Section 34 proceedings, to claim mesne profits till vacation of premises. Having regard to this position in law, the Court is of the view that the learned Single Judge's conclusion in rejecting the application for appointment of Arbitrator cannot be faulted.

The appeal is accordingly dismissed.

JULY 17, 2013
/vks/


S. RAVINDRA BHAT, J


NAJMI WAZIRI, J