

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.01.2015

+ **FAO(OS) 43/2015**

MUKESH AGGARWAL

... Appellant

versus

ATUL GUPTA & ANR

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr P. R. Agarwal with Mr Y. R. Sharma and
Mrs Anju Bhushan

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 1585/2015

Allowed subject to all just exceptions.

FAO(OS) 43/2015 & CM 1584/2015

1. This appeal is directed against the order dated 14.01.2015 passed by a learned Single Judge of this Court in OMP 984/2014 which had been filed by the appellant.

2. The said OMP 984/2014 was filed under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), requesting

the Court to decide on the issue of termination of mandate of the arbitrator. The learned Single Judge rejected the said application on the ground that Section 14 is not applicable as none of the conditions prescribed in Section 14(1)(a) read with Section 14(2) have been satisfied. The learned Single Judge came to the conclusion that the appellant was unable to show that the arbitrator had become *de jure* or *de facto* unable to perform his functions or had failed to act without undue delay. As a consequence, the said application was rejected.

3. It is also relevant to note that the charge of the appellant against the arbitrator is of justifiable doubts as to his independence and/ or impartiality. Based on this, the appellant had moved an application following the procedure of challenge prescribed under Section 13 of the said Act. Section 12(3) stipulates that an arbitrator may be challenged only if, (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or (b) he does not possess the qualifications agreed to by the parties. It is the case of the appellant that circumstances exist which give rise to justifiable doubts as to the independence/ impartiality of the arbitrator. It is for this reason that challenge was raised by the appellant, following the procedure prescribed under Section 13 and in particular, sub-section (2) thereof. The said challenge, which was in the form of an application, was disposed of by the arbitrator by rejecting the same by an order dated 30.07.2014.

4. Once this happens, the next step is stipulated in Section 13(4), which provides that if a challenge is not successful, the Arbitral Tribunal shall continue the arbitral proceedings and make an arbitral award. However, to safeguard the interest of the party challenging the arbitrator unsuccessfully, provision has been made in sub-section (5) of Section 13 to enable such party to challenge the award by making an application for setting aside the same in accordance with Section 34 of the said Act. That is the course of action which the appellant has to follow. Section 14 is clearly inapplicable. It does not deal with the situation of a party having justifiable doubts as to the independence or impartiality of an arbitrator. The latter aspect is completely covered by Section 12 and 13 of the said Act. Therefore, the learned Single Judge was right in dismissing the application of the appellant under Section 14 of the said Act particularly when the appellant had taken the route of Section 13.

5. As a result, the appeal has no merit. The same is dismissed. But, there shall be no order as to costs.

BADAR DURREZ AHMED, J

**JANUARY 30, 2015
SR**

SANJEEV SACHDEVA, J