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

Date of Order: November 18, 2015

+ W.P.(C) 1638/2012

SANJEEV KAUSHIK Petitioner
Through: Mr. K. C. Mittal, Advocate

versus

UOI & ORS Respondents
Through: Mr. Jagjit Singh, Ms. Nisha and
Mr. Preet Singh, Advocates for
respondent No.4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

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Rev. Petition No.497/2013 in W.P.(C) 1638/2012

Vide order of 9th April, 2012, it was directed that if the registration of petitioner in respect of the lease contract in question has been restored, then as a necessary corollary thereto, the forfeiture of the security deposit has to be also restored.

Review of aforesaid order is sought by respondent by submitting that the dispute raised by petitioner is arbitrable. Attention of this Court was drawn by learned counsel for respondent/reviewist to Clause 27 of the Lease Agreement (*Annexure P-4*) to point out that any dispute between the Railway Administration and the Lease Holder in respect of

the rights and obligations flowing out of the lease contract is referable to the sole arbitrator and the jurisdiction of the Civil Court is barred. According to learned counsel for respondent/reviewist, although the registration of petitioner has been restored, but the security deposit stands forfeited and is not restored automatically.

To oppose this review petition, learned counsel for petitioner relies upon Clause 7 of the Lease Agreement (*Annexure P- 4*) to point out that failure to work under the Lease Agreement results in forfeiture of the registration fee alone and not the security deposit and that the said order is appealable. It was pointed out that petitioner had preferred an appeal against the forfeiture of the registration fee and the security deposit and the said appeal stands allowed by respondent. However, it is submitted that only the registration of petitioner has been restored but not the security deposit and this Court has rightly directed vide order of 9th April, 2012 that the security deposit also needs to be restored and thus, there is no substance in this review petition.

Upon hearing and on perusal of this Court's order of 9th April, 2012 and the material on record, I find that along with Review Petition, a Communication of 21st July, 2011 (*Annexure A-1*) by respondent to petitioner is appended, which discloses that petitioner had stopped the work w.e.f. 1st June, 2011 in respect of the Lease Agreement in question. As per Clause 7 of the Lease Agreement (*Annexure P-4*), the stoppage of the work in respect of the awarded contract entails forfeiture of the registration fee and the said order is appealable.

In this considered opinion of this Court, a separate remedy of appeal is provided under Clause 7 of the Lease Agreement (*Annexure P-*

4) and so resort to Clause 7 of the Lease Agreement (*Annexure P- 4*) is not required to be made. Thus, there is no justification to invoke arbitration clause in the instant case. However, I find that responder's order of 23rd March, 2012 restoring the registration of petitioner does not deal with the restoration of the security deposit. Therefore, order of 9th April, 2012 is reviewable to the extent of issuing direction to Respondent's Chief Commercial Manager (Freight), New Delhi to decide petitioner's appeal in respect of the restoration of the security deposit as well.

Let it be so done within a period of six weeks and the decision in respect of refund of security deposit be conveyed to petitioner after giving an opportunity of hearing to him. To the aforesaid extent, the order of 9th April, 2012 stands reviewed. Review petition is disposed of with direction to contesting respondent No.4 to decide petitioner's appeal in respect of refund of the security deposit as well. The decision taken in this regard be conveyed to petitioner within a week so that petitioner can avail of the remedy as available in law, if need be.

The Review Petition stands accordingly disposed of.

(SUNIL GAUR)
JUDGE

NOVEMBER 18, 2015

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