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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.A. 26/2015

CHANDER MOHAN LALL

..... Appellant

Through: Mr. Sandeep Sharma and Ms.
Risha Mittal, Advocates along
with Appellant

versus

DLF HOME DEVELOPERS LTD. & ANR. Respondents

Through: Mr. Rajiv Nayyar, Sr. Advocate
with Mr. Pravin Bahadur, Ms. Nimita Kaul,
Mr. Prabhal Mehrotra and Mr. Amit
Aggarwal, Advocates

CORAM: JUSTICE S. MURALIDHAR

ORDER

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15.05.2015

1. A preliminary objection has been raised by Mr. Rajiv Nayyar, learned Senior counsel for the Respondents, regarding the maintainability of the present appeal under Section 37 of the Arbitration and Conciliation Act 1996 ('Act'). Mr. Sandeep Sharma, learned counsel for the Appellant, on the other hand submits that the order should be treated as one under Section 17 of the Act and therefore appealable. Alternatively, it is submitted that since it arises

out of earlier directions issued by this Court, there is no option available but to challenge the impugned order in this Court.

2. It is seen that the impugned interim order was passed by the learned sole Arbitrator in an application filed by the Respondents seeking striking out of certain portions of the affidavit of rebuttal evidence filed by the Appellant. Although the provision under which the said application was filed was not indicated in the application, the order passed thereon can at best be termed a procedural order. Under Section 19 of the Act it is open to the learned sole Arbitrator to determine the rules of procedure. The impugned order has been passed by the learned Arbitrator in exercise of the powers under Section 19 of the Act. Under Section 37 (2) (b) an appeal is maintainable against the interim order of the Arbitral Tribunal while “granting or refusing to grant interim order under Section 17”. There is no provision for an appeal against a procedural order passed at an interlocutory stage by the Arbitral Tribunal cannot be challenged by way of an appeal under Section 37 of the Act. This is consistent with the legislative intent of minimising interference by the Court with the arbitral proceedings at an interlocutory stage.

3. To account for any difficulty that might be caused as a result of not providing with an appeal at an interlocutory stage, the legislature has provided in Section 34 some of the grounds of challenge to an award on procedural issues. For instance, under Section 34 (2) (iii) of the Act, a party could urge that the Award is bad in law because such party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was “otherwise unable to present his case”.

4. The Court is of the view that as far as the impugned interim order passed by the learned Arbitrator is concerned, it cannot be characterised as an order which is appealable under Section 37 (2)(b) of the Act. It is however clarified that all the grounds urged by the Appellant in the present appeal would be available to the Appellant to be urged in the event there is an occasion for him to challenge the Award that might be passed by the learned Arbitrator.

5. The appeal is dismissed in the above terms.

S.MURALIDHAR, J

MAY 15, 2015/sd