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

\+ **ARB.P. 434/2015**

% **Date of Decision: 03rd December, 2015**

SHRI ASHWANI KUMAR KHANNA ..... Petitioner
Through: Mr. Nakul Sachdeva, Advocate.

versus

SHRI RAJESH VERMA ..... Respondent
Through: Mr. Sanjeev Ailawadi, Adovcate.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner is seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act.

2. The petitioner was a statutory tenant under the respondent in respect of a shop measuring 153.58 sq. ft. situated in property no.1729, Gali No.5, Govind Puri Extension, Kalkaji, Delhi-110019 at a monthly rent of Rs.175/- since 01st July, 1977.

3. Vide agreement to sell dated 31st October, 2014, the petitioner agreed to handover the vacant and peaceful possession of the aforesaid shop to the respondent on or before 01st November, 2014 whereupon the respondent agreed to demolish the same and construct a new shop measuring 153.58. sq. ft. in its place on or before 31st March, 2015 and the respondent agreed to sell the said shop to the petitioner for a total consideration of Rs.42,00,000/-. The agreement records that the petitioner paid a sum of Rs.32,00,000/- as advance money in cash to the respondent and the balance sale consideration

of Rs.10,00,000/- was agreed to be paid by the petitioner to the respondent at the time of execution of the sale deed. The agreement contains arbitration clause No.14 for reference of disputes between the parties to arbitration.

4. The petitioner handed over the possession of the shop under his tenancy to the respondent on 01st November, 2014 in terms of the agreement. The petitioner made payment of Rs.3,45,000/- to the respondent during the period 8th January, 2015 to 24th March, 2015. The petitioner got prepared a demand draft of Rs.6,55,000/- on 31st March, 2015 towards to balance sale consideration to be paid to the respondent on or before 31st March, 2015 and contacted the respondent for completion of the sale. However, the respondent declined to complete the sale whereupon the petitioner issued the notice dated 28th May, 2015 to the respondent. The respondent replied to the said notice on 03rd June, 2015 in which the respondent did not dispute the agreement to sell dated 31st October, 2014. However, the respondent denied the receipt of cash of Rs.32,00,000/- and pleaded that the agreement between the parties lapsed on account of inability of petitioner to pay balance sale consideration on or before 31st March, 2015.

5. Vide notice dated 29th June, 2015, the petitioner invoked the arbitration clause. The respondent sent a reply dated 03rd July, 2015 to the notice dated 29th June, 2015 in which the respondent again admitted the sale agreement dated 31st October, 2014. However, the respondent again denied the payment of cash of Rs.32,00,000/- from the petitioner. The respondent also raised the plea that the petitioner got the said agreement executed by the respondent by playing fraud.

6. In para 1 of the preliminary objections of the reply filed by the respondent, the respondent has specifically admitted agreement to sell dated 31st October, 2014 and has taken a plea that the respondent has terminated

the agreement dated 31st October, 2014 due to the lapse and non-compliance of the terms by the petitioner. Para 1 of the preliminary submissions of the reply is reproduced hereunder:-

> *"1. It is stated that the Petitioner has no claim against the Respondent as alleged in the instant Petition. It is stated that since the Petitioner failed to abide by the agreed terms and conditions of the Agreement to Sell dated 31.10.2014, therefore the Respondent had no option but to terminate the Agreement to sell dated 31.10.2014 which was already lapsed due to non-compliance of the terms of the agreement to sell by the petitioner."*

7. The petitioner instituted a petition under Section 9 of the Arbitration and Conciliation Act being O.M.P.(I) 312/2015 in which this Court, vide order dated 03rd July, 2015, restrained the respondent not to create any third party interest in respect of subject shop and to maintain status quo. The relevant portion of the order dated 03rd July, 2015 is reproduced hereunder: -

> *"4. In view of the fact that the petitioner has paid around 85% of the sale consideration to the respondent for purchase of rights in the suit property admeasuring 153.58 sq. ft. in property No. 1729, Gali No.5, Govind Puri Extension, Kalkaji, New Delhi, the respondent is restrained in any manner from creating a third party interest in this property and to maintain the status quo with respect to the same."*

8. Learned counsel for the respondent has urged at the time of hearing that the respondent did not receive the cash amount of Rs.32,00,000/- from the petitioner. Learned counsel further submits that the arbitration clause was not contained in the draft agreement agreed to be executed between the parties. Learned counsel further submits that the agreement dated 31st October, 2014 has been got executed by the respondent fraudulently.

9. The original agreement dated 31st October, 2014 has been produced by the petitioner which has been perused by this Court. The original

agreement is executed on E-Stamps of Rs.100/-. The first page bears the photographs of the parties with their signatures as well as thumb impressions. Each page is signed by both the parties and also bears their thumb impressions. Important aspect is that there are three over-writings on page No.1, 2 and 3 which are duly signed by both the parties which shows that the parties read the agreement before signing and cared to even sign the over-writings. The original agreement is seen and returned back.

10. If the respondent had not received Rs.32 lakhs from the petitioner at the time of the agreement dated 31st October, 2014, the respondent would not have signed the agreement in the first instance. The petitioner thereafter paid Rs.50,000/- to the respondent on 8th January, 2015, Rs.50,000/- on 29th January, 2015, Rs.75,000/- on 18th February, 2015, Rs.25,000/- on 23rd February, 2015, Rs.40,000/- on 28th February, 2015, Rs.20,000/- on 5th March, 2015, Rs.50,000/- on 20th March, 2015 and Rs.35,000/- on 24th March, 2015 which are acknowledged on the back of the agreement. If the respondent had not received Rs.32,00,000/- from the petitioner at the time of signing of the agreement, the respondent would not have received the aforesaid payments. It is not disputed that the respondent had a copy of the agreement dated 31st October, 2014 and the respondent did not raise any objection till 03rd June, 2015. The respondent made a complaint to the police on 23rd July, 2015. There is no explanation as to why the respondent waited till 23rd July, 2015 to make a complaint against the petitioner. The respondents have pleaded fraud but no particulars of the alleged fraud have been furnished and, therefore, the respondent's defence is not believable. The respondent has taken the possession of the shop from the petitioner under the agreement dated 31st October, 2014 and if the agreement dated 31st October, 2014 is assumed to be void as alleged by the respondent, the respondent would be liable to return back the shop to the petitioner under

Section 65 of the Contract Act.

11. This Court is satisfied that there is a legal, valid and enforceable agreement dated 31st October, 2014 which contains an arbitration agreement in clause No.14. The disputes have arisen between the parties which warrants appointment of an arbitrator by this Court.

12. The petition is allowed and Mr. Ashok Chhabra, Advocate, Mobile No.9810008481 is appointed as sole arbitrator to adjudicate the disputes between the parties including their claims and counter-claims.

13. The learned arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Ordinance, 2015 dated 23rd October, 2015.

14. The observations made by this Court are prima facie and the arbitrator shall adjudicate the disputes between the parties uninfluenced by the observations made by this Court.

15. Copy of this judgment be given *dasti* to counsel for the petitioner under the signature of the Court Master. A copy of this judgment be sent to the learned Arbitrator.

J.R. MIDHA, J.

DECEMBER 03, 2015

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