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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1071/2011 & C.M. No.19454/2011

NITIN GUPTA

..... Petitioner

Through Mr. Ajit Singh and Mr. Shashi
Ranjan, Advs.

versus

CL EDUCATE LTD & ORS

..... Respondents

Through Mr. D.K. Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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22.04.2016

The petitioner is aggrieved by the order dated 15.04.2010 on which date since none had appeared for the claimant despite opportunities, his case had been dismissed in default; the proceedings stood terminated and the file was directed to be consigned. This was an order passed by the sole Arbitrator.

Record shows that a claim had been filed by the claimant Nitin Gupta against Career Launcher India Ltd.. The address mentioned by the claimant in this claim petition was G-11, DGS, CGHS Ltd., Plot No. 6, Sector 22, Dwarka, New Delhi. Record further discloses that the claimant has put in his appearance before the Arbitrator on 22.09.2009 on which date the statement of his claim had been filed by him. On the following dates, the claimant was not present. On 15.01.2010, the Arbitrator had noted that a separate claim petition had

been filed by the respondent i.e. Career Launcher India Ltd.. Attention has been drawn to that document. Address of the petitioner/claimant mentioned in that petition is an address of Model Town, Delhi; it is not Dwarka address mentioned by the claimant in the present petition. This has been brought to the notice to substantiate the argument of the learned counsel for the claimant that the impugned order dated 15.04.2010 shows that the claimant had been informed but the submission of the learned counsel for the claimant being that he was informed at the Model Town address and not at the Dwarka address; he is in fact not a resident of Model Town but a resident of Dwarka. The proceedings had been terminated on a wrong factual premise.

Per contra, this submission has been refuted by the learned counsel for the respondents.

Record shows that under Section 25 (c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') where a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the Arbitral Award on the evidence before it. Under Section 32 of the said Act, termination of proceedings are enlisted. Under Section 32 (2)(c), an Arbitral Tribunal may terminate the proceedings where it finds that it has become unnecessary or impossible to continue with the proceedings. Submission of the learned counsel for the petitioner is that the Arbitral Tribunal had proceeded on a wrong factual premise noting that the claimant was

not appearing inspite of notice to him; submission being reiterated that this service was not affected at Dwarka which is the address mentioned in the claim petition and there is no iota of document to show that the petitioner/claimant had been renotified of the proceedings by the Arbitrator at his Dwarka address.

There is no opposition to this submission made by the learned counsel for the petitioner.

Russell on 'Arbitration, Nineteenth Edition (page 271)' has noted that in general, an Arbitrator is not justified in proceeding ex-parte without giving the party absenting himself due notice. The Arbitrator should normally express that he is going to proceed ex-parte against one or the other party.

In AIR 1984 NOC 158 (KANT.) B.K. D. Alloy (P) Ltd., Hubli Vs. Pavi Electrical Industries (P) Ltd. it was held that where the Arbitrator had not issued a peremptory notice of hearing to the party bringing it its notice that he would proceed to hear the matter even if the said party was absent had resulted in a flagrant violation of the principles of natural justice.

Without delving any further into the notation of these judgments but noting that in the instant case record substantiates the submission of the petitioner that he had not been renotified of the intention of the Arbitrator to proceed with the matter when the claimant was absent, this Court is of the view that the impugned order dated 15.04.2010 is liable to be set aside. It is accordingly set aside. The Arbitrator shall proceed with the matter and pronounce his

Award after hearing the contentions of the parties and permit them to lead evidence, if any.

Parties are directed to appear before the Arbitrator on 11.07.2016 at 04:00 PM.

Petition disposed of.

INDERMEET KAUR, J

APRIL 22, 2016

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