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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 406/2013

INDER MOHAN SHARMA

..... Petitioner

Through: Mr. Attin Shankar Rastogi, Advocate.

versus

MAHENDER GOPAL AND ORS.

..... Respondents

Through: Mr. Rajiv Narain, Advocate for
Respondents 1, 3 to 9.

Mr. Rajesh Kumar, Advocate for Respondent No.2

CORAM: JUSTICE S. MURALIDHAR

ORDER

15.11.2016

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1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') has been filed by Inder Mohan Sharma seeking reference of the disputes that he has with the Respondents arising out an agreement to sell dated 12th March 2010 in respect of Shop No. 1486, E.S. Pyarelal Building, Chandni Chowk, Delhi-6 to arbitration.

2. It is not in dispute that the agreement to sell contains an arbitration clause. It needs to be noted that the parties have been trying to negotiate a settlement for over three years now. Barring Respondent No.2 all other Respondents are agreeable to execute the sale deed in favour of the Petitioner. Learned counsel for Respondent No. 2 even today states that he is unwilling to execute the sale deed. When asked why he is opposed to the request for arbitration, his counsel submits that the claim by the Petitioner is

time barred. When asked to explain, he points out that the invoking of the arbitration clause took place two years after filing of the OMP No. 594 of 2011 and more than three years after the cause of action arose.

3. Learned counsel for the Petitioner on the other hand pointed out that the Respondents themselves issued a notice to the Petitioner on 10th July 2010 granting time to the Petitioner to complete the formalities for execution of the sale deed on or before 31st July 2010. He pointed out that a reply to that letter was sent by the Petitioner on 14th July 2010 purportedly expressing his willingness to fulfil the necessary obligations. It is submitted that in view of these developments, the notice invoking arbitration clause was within limitation.

4. The Court is of the view that the Petitioner's claims prima facie does not appear to be barred by limitation. Nevertheless, this can be examined by the learned Arbitrator if raised by the Respondent in accordance with law.

5. The other objections of Respondent No. 2 are on merits and are not required to be examined by the Court at this stage.

6. In that view of the matter, the Court appoints Mr. Neeraj Kumar Gupta, a former District & Sessions Judge, Delhi (Mob. No. 9910384632) as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

7. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

NOVEMBER 15, 2016

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