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

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**O.M.P.(T) 28/2015**

GAGANDEEP SINGH

..... Petitioner

Through: Mr. Jagjit Singh, Advocate.

versus

JAGBIR SINGH

..... Respondent

Through: Mr. Ayushya Kumar and Mr. Sudeep  
Dey, Advocates.

**CORAM: JUSTICE S.MURALIDHAR**

**ORDER**

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**20.12.2016**

1. This is a petition under Section 14 (1) (b) read with Section 15 (1) (a) and 15 (2) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of a substitute arbitrator in place of the previous Arbitrator.
2. The background to the present petition is that in OMP No. 192 of 2008 (*Gagandeep Singh v. Ravinder Kaur & Ors*) and OMP No. 193 of 2008 (*Gagandeep Singh v. Jagbir Singh & Ors*), an order dated 9<sup>th</sup> April, 2008 was passed by this Court with the consent of the parties appointing a sole Arbitrator to decide the dispute regarding dissolution of a partnership firms, Nischal's Klick Selections and Nu Nischal Klick Selections.
3. During the pendency of the arbitration proceedings, issues were framed by the learned Arbitrator in regard to both references on 18<sup>th</sup> January, 2011.

4. Meanwhile, the Petitioner had filed two applications dated 24th October, 2011 and 31st October, 2011 under Section 12 of the Act challenging the Arbitrator, and another application dated 14th November, 2011 seeking clarification of the order dated 31st October, 2011. All these applications were rejected by the learned Arbitrator by an order dated 28th January 2012. OMP No. 249 of 2012 filed by the Petitioner challenging the above common order was dismissed by this Court on 16<sup>th</sup> March, 2012.

5. Three separate applications were thereafter filed by the Petitioner before the learned Arbitrator - one for early disposal of reference, another for correction of issues, and a third application for recalling of orders regarding visit by the sole Arbitrator regarding newly acquired premises by Nischal's Klick Selection. Admittedly, the arguments on the above applications were heard on 30th August, 2012 and the orders were reserved.

6. It appears that on account of non-payment of fees of the learned Arbitrator, the proceedings were thereafter suspended till December 2014. On 5<sup>th</sup> December, 2014 an application was filed by the Respondent seeking re-commencement of the proceedings. Upon receipt of a copy thereof, the Petitioner on 9<sup>th</sup> December, 2014 filed an application pleading that holding of no proceedings for 27-28 months amounted to termination of mandate of the Arbitrator.

7. Thereafter, OMP No. 53 of 2015 was filed by the Petitioner under Section 9 of the Act seeking termination of the mandate of the sole Arbitrator. On 12<sup>th</sup> January, 2015 the said OMP was disposed of with the directions that the learned Arbitrator would "expeditiously pronounce orders on the application

filed by the Petitioner including the three applications on which orders were reserved on 30<sup>st</sup> August, 2012 at the earliest, if not already done, within a further period of one month thereafter and in any event by the end of February 2015.

8. Thereafter, two separate orders were passed by the learned Arbitrator on 20<sup>th</sup> March, 2015. One order disposed of the applications dated 1<sup>st</sup> December, 2014 filed by the Respondents (one in each matter) for revival of the suspended proceedings on payment of entire outstanding arbitration fee and expenses. While reviving the proceedings, in para 3 of the said order, the learned Arbitrator held as under:

“3. The orders on the three applications moved on behalf of the claimant were ready on 13<sup>th</sup> September, 2012 in the computer but the pronouncement was withheld due to suspension of proceedings (under the second proviso to Section 38(2) of the Arbitration and Conciliation Act, 1996), because of non-payment of outstanding arbitration fee and expenses. The said orders dated 13<sup>th</sup> September, 2012 will now be signed and announced.”

9. By another separate order on the same date i.e., 20<sup>th</sup> March, 2015 the learned Arbitrator disposed of two applications dated 9<sup>th</sup> December, 2014 moved by the Petitioner under Sections 14 and 15 of the Act. The learned Arbitrator held that, “considering all the facts and circumstances the applications of the claimant have become infructuous and the same are dismissed as infructuous.”

10. What is significant in the first order dated 20<sup>th</sup> March, 2015 is that the learned Arbitrator expressed his inability to continue with the matter and

that he was writing a letter to this Court to that effect requesting the Court to appoint some other Arbitrator. It is another matter that ultimately the said letter was in fact sent by the learned Arbitrator on 23<sup>rd</sup> March, 2015 as noted in the order dated 18<sup>th</sup> May, 2015 passed by this Court in OMP Nos. 192 and 193 of 2008.

11. Immediately, on the next date i.e., 21<sup>st</sup> March 2015 the learned Arbitrator appears to have issued separate orders on the applications on which arguments were heard and order reserved. Copies of these orders have been placed on record. It is seen in both orders that the date is shown as "13.9.2012/21.3.2015". The latter date i.e. 21st March 2015 was written by hand. Also next to it in hand it was written: " (Please see the note on the last page of this order)". That note reads thus:

"pronouncement was withheld due to the reasons given in the order dated 20th March, 2015 and in the letter being addressed to the Hon'ble High Court of Delhi. Therefore the order is being signed and pronounced today."

12. As a result of the learned Arbitrator stating that he does not wish to continue, the present petition has been filed seeking a substitution. There is however an issue as regards the validity of the orders dated 21st March 2015. passed by the said Arbitrator. Mr. Jagjit Singh, learned counsel for the Petitioner urged that as far as the two orders dated 21<sup>st</sup> March, 2015 are concerned, they ought to be set aside as the learned Arbitrator had ceased to act as such one day earlier. Therefore he could not have thereafter passed any orders.

13. On the other hand, Mr. Ayushya Kumar, learned counsel for the

Respondent urged that as communicated by the learned Arbitrator himself in the said orders dated “13.9.2012/21.3.2015”, the said orders had already been fed into the computer and were merely printed out and signed on 21st March 2015. He therefore urged that they need not be disturbed. Secondly, he submitted that although the learned Arbitrator stated in his order dated 20<sup>th</sup> March, 2015 that he did not wish to continue as such, he in fact wrote a letter to this Court only on 23<sup>rd</sup> March, 2015. Therefore, when he passed the orders dated 21st March, 2015 he was continuing as Arbitrator.

14. As far as the above submissions are concerned, the Court is of the view that the order dated 20<sup>th</sup> March, 2015 passed by the learned Arbitrator makes it explicit that he had decided on that date itself that he did not wish to continue. Further he stated in the said order that he was writing to the High Court conveying that decision. Therefore, for all practical purposes, he had ceased to be an Arbitrator on 20th March 2015 itself. Thereafter there was no occasion for him to pass any order in the matter. Consequently, the Court has no hesitation to set aside the two orders dated "13.9.2012/21.3.2015" passed by the learned Arbitrator. The consequence would therefore be that three applications of the Petitioner in which the two aforementioned orders were passed would revive. They would be heard and decided afresh by the Arbitrator to be appointed hereafter by this Court.

15. The Court, accordingly, appoints Mr. G.P. Thareja, a former Additional District Judge, Delhi (Telephone No. 20906899) residing at B-201, Priyadarshini Apartments, Patparganj, Delhi as sole Arbitrator to adjudicate the disputes between the parties in the form of two references. The learned

Arbitrator will resume the proceedings from the stage at which they were before the previous Arbitrator as on 30<sup>th</sup> August, 2012. Mr Thareja shall fix his own terms and communicate them to the parties.

16. The parties will appear before Mr G.P. Thareja on 30<sup>th</sup> January, 2017 at 4 pm or such changed time and/or date that he finds convenient which will be communicated to the parties at least ten days in advance. The venue for the first hearing will be fixed by the Petitioner and communicated to Mr Thareja and the Respondent at least one week prior to the date fixed. The expenses for the hearing shall be shared equally by the parties.

17. Since considerable time has already elapsed, the Court requests Mr Thareja to proceed expeditiously in the matter. Both the parties will co-operate with the learned Arbitrator in this regard without seeking unnecessary adjournments.

18. A communication be sent to the previous Arbitrator by the Registry of this Court to send the complete arbitral record in this Court in a sealed cover which will then be delivered to Mr. Thareja within a period of four weeks.

19. The petition is disposed of in the above terms. Order be given *dasti*. A copy of this order be delivered to Mr Thareja forthwith.

**S.MURALIDHAR, J**

**DECEMBER 20, 2016/Rm**