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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 367/2015

DEVENDER AGGARWAL

..... Petitioner

Through: Mr. Bharat Bhushan Jain with
Mr. Mayank Garg, Advocates.

versus

ATUL AGGARWAL & ORS

..... Respondents

Through: Mr. Praveen Kumar Jain with
Ms. Rachna Agarwal, Advocates for R-1 & 2.

CORAM: JUSTICE S.MURALIDHAR

ORDER

26.09.2016

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1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator.

2. Background facts are that the Petitioner, Devender Aggarwal, entered into an agreement to sell with Respondent Nos. 1 and 2, Atul Aggarwal and Leena Bajaj, on 6th July 2012 whereby they agreed to sell the Petitioner second floor of the property bearing No. 25 and 110 (Part) in Block 25, Shakti Nagar, Delhi – 110 007 admeasuring 236 sq.yds ('the property in question') for a total consideration of Rs. 3 crores. According to the Petitioner, Rs. 1.65 crores was paid as advance which was acknowledged by Respondent Nos. 1 and 2.

3. For the purpose of the present petition, it requires to be noticed is that Clause 10 of the said Agreement to Sell contained the following arbitration clause:

“That in case any dispute arises between both the parties regarding the terms and conditions of this agreement, then the said dispute shall be referred and settled by arbitration. Both the parties appoint Shri Vimal Bhatia r/o 648, Shakt Khand-IV, Indirapuram, Delhi NCR and Shri Subhash Agarwal s/o Late Shri T.C. Agarwal r/o C-3, Phase-I, Ashok Vihar, Delhi – 52 as their arbitrators to resolve any dispute and their arbitrators to resolve any dispute and their decision shall be final and abiding on both the parties of this agreement.”

4. The Petitioner states that he invoked the above clause and issued a notice on 27th December 2013 to Respondent Nos. 1 and 2. He also sent a letter on 4th February 2014 to the named Arbitrators (who have been impleaded as Respondent Nos. 3 and 4 herein) requesting them to enter upon reference. It is stated that Respondent No. 3 Mr. Vimal Bhatia acceded to the request and wrote a letter on 26th February 2014 conveying his consent to act as Arbitrator. The Petitioner has placed on record a copy of the letter dated 18th February 2014 written by Mr. Bhatia to Mr. Subhash Agarwal (Respondent No. 4), the other arbitrator. Mr Agarwal replied on 26th February 2014 suggesting that they should meet on 3rd March 2014 to decide about the appointment of the third Arbitrator in terms of the Act.

5. According to the Petitioner, there was no progress in the matter thereafter. It is accordingly submitted that since the arbitration is a non-starter, this Court should appoint an Arbitrator.

6. Learned counsel for the Respondents on the other hand submitted, on the strength of the decision of the Supreme Court in *Narayan Prasad Lohia v. Nikunj Kumar Lohia AIR 2002 SC 1139* that the two named Arbitrators

can continue and only when there is any difference between them that a need would arise for appointing a a third Arbitrator. Learned counsel for the Respondents is however unable to produce any document or order passed by the two named arbitrators in the arbitration proceedings to show that any steps taken by them after their appointment as such.

7. The only conclusion that the Court can draw, therefore, is that despite two years having elapsed since the two Arbitrators were notified pursuant to the above clause in the agreement to sell, they have failed to act without undue delay. Consequently, in exercise of powers under Section 14 (1) (a) of the Act, the Court is constrained to terminate the mandate of the two named arbitrators.

8. Accordingly, the Court appoints Ms. Kiran Nath, former Additional District Judge (Mobile No 9910384659), residing at T-107, Aam Bagh, Near Andheria Modh, Mehrauli, Delhi – 110030 as sole Arbitrator for adjudication of the disputes between the parties. 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.

9. 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

SEPTEMBER 26, 2016/Rm