

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

% *Order delivered on : 8th March, 2016*

+ **ARB.P. 442/2015**

TURNER MORRISON LIMITED Petitioner

Through Mr.Lalit Gupta, Adv. with Ms.Garima
Goel, Adv.

versus

PARVATI DEVI & ANR Respondents

Through Mr.M.Dutta, Adv.

+ **ARB.P. 443/2015**

TURNER MORRISON LIMITED Petitioner

Through Mr.Lalit Gupta, Adv. with Ms.Garima
Goel, Adv.

versus

PARVATI DEVI & ANR Respondents

Through Mr.M.Dutta, Adv.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petitions under Section 11 read with Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) for the appointment of substitute arbitrator.

2. The details of the earlier litigations and the facts of the present petitions are mentioned in para 1 to 29 of the petitions.

3. The petitioner had filed a petition under Section 9 of the Act, bearing O.M.P. No. 73/2007 which was allowed by learned Single Judge of this Court vide common judgment dated 23rd September, 2009 passed in two connected petitions bearing OMP No. 73/2007 and OMP No. 117/2007.

4. In Arb.P. 442/2015 Construction Agreement dated 11th December, 1995 contained the following arbitration clause :-

"10. In the event of any dispute or differences between the parties relating to terms of this Agreement or any part thereof, the same shall be referred to the sole Arbitration of Shri P. V. Kapur, Senior Advocate whose decision shall be final and binding on the parties. The venue of the arbitration shall be in Delhi and it shall be concluded in accordance with Indian Arbitration Act, 1940."

5. In Arb.P. 443/2015 Maintenance Contract dated 15th October, 1999 contained the following arbitration agreement/ clause:-

"22.1. Any dispute or differences between the parties hereto relating to or arising out of this agreement shall be referred to the sole Arbitrator, acceptable to all parties, to be appointed by Tuareg. The arbitration shall be conducted in accordance with the Arbitration & Conciliation Act, 1996 and/or any statutory modification thereto and the venue of arbitration shall be at Delhi. The expenses of the arbitration proceedings shall be borne by each party in equal proportion."

6. In view of the abovementioned arbitration clauses, the petitioner sent a notice dated 16th June, 2007 bearing reference No. L-110/2007 and L-111/2007 in Arb.P. 442/2015 and Arb.P. 443/2015 respectively, through its counsel to the said named Arbitrator namely Mr. P.V. Kapur, Senior Advocate and copies of the said notice were also sent to respondents. In the said notice, it was mentioned that due to disputes having arisen between the

parties, the same ought to be adjudicated by the process of arbitration and thus by invoking the said arbitration clause; a request was made to the said named Arbitrator to enter upon reference. The said notice was duly served upon the respondents as well as the said named Arbitrator.

7. As the respondents raised some objections about Mr. P.V. Kapur, Senior Advocate, this Court appointed an independent Arbitrator. Thereafter, this Court nominated Justice Arun B. Saharya (Retd.)(Former Chief Justice of High Court of Punjab & Haryana) as the Arbitrator in both the matters. This Court also observed that in case Justice Arun B. Saharya (Retd.) has no reservations, he shall enter the reference and shall charge fee from the parties as per the standard set by Indian Council of Arbitrators. In terms of the order dated 6th March, 2009, the suit being CS (OS) No.1650/2007 and the application being I.A. No. 13444/2007 were disposed of.

8. It is informed that many meetings were held by Justice Arun B. Saharya (Retd.) which were duly attended by the petitioner. A statement of claim along with relevant documents has been filed in both the matters on behalf of the petitioner before the said sole Arbitrator.

9. By communication dated 1st August, 2012 addressed to the counsel for the petitioner as well as the respondents, Justice Arun B. Saharya (Retd.) had informed that he did not wish to serve as an Arbitrator in the said arbitration proceedings. Justice Arun B. Saharya (Retd.) has resigned and withdrawn from the office of the sole Arbitrator in terms of Clause (a) of Sub-Section 1 of Section 15 of the Act. The counsel for the petitioner was

requested to collect all the papers and documents submitted on behalf of the petitioner in both the arbitration proceedings against the receipt.

10. Under these circumstances, the petitioner filed a petition under Section 11 read with Section 15(2) of the Act, bearing Arbitration Petition No. 96/2013 praying for appointment of a substitute Arbitrator in both the disputes.

11. By order dated 9th October, 2013, the said Arbitration Petition No. 96/2013 was allowed and Justice A.P. Shah (Retd.) was appointed as the substitute Arbitrator. All the records of Arbitration were requisitioned by this Court vide its order dated 4th March, 2013 passed in Arbitration Petition No. 96/2013. However, even the substitute Arbitrator namely Justice A.P. Shah (Retd.) resigned as Arbitrator as communicated by letter dated 22nd November, 2013.

12. Thus, in terms of Section 15(2) read with Section 11 of the Act, the present petitions have now been filed to appoint a substitute sole Arbitrator on the same terms and conditions already passed pertaining to the earlier sole Arbitrator.

13. It appears that there exist disputes between the petitioner and the respondents which need to be adjudicated upon by an independent substitute Arbitrator to be now appointed by this Court in accordance with the Arbitration Agreement/Clauses.

14. Both parties have given their consent in this regard. They also agreed that all the objections raised by any party would be considered by the sole Arbitrator as per its own merit who would continue the proceedings at the

stage left by the earlier sole Arbitrator. The terms and conditions would remain the same. Ordered accordingly.

15. Accordingly, Justice R.V. Raveendran (Retd. Judge of Supreme Court of India) is appointed as substitute sole Arbitrator to adjudicate the disputes arising out of the agreements in question between the parties.

16. The petitions are accordingly disposed of.

17. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator.

(MANMOHAN SINGH)
JUDGE

MARCH 8, 2016