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

Date of Decision: 27th September, 2016

+ FAO 405/2015 & C.M.No.28201/2015

DEVENDRA KUMAR Appellant

Through: Mr. F.S. Chauhan, Advocate

Versus

MAHANAGAR TELEPHONE NIGAM LIMITEDRespondent

Through: Mr. Rajeev Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

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Impugned order of 10th August, 2015 rejects appellant's objections under Section 34 of *The Arbitration and Conciliation Act, 1996* against the Award of 8th July, 2013 rendered under Section 7B(2) of *The Indian Telegraph Act, 1885*. Impugned order holds that appellant's objections are not maintainable as Sub-Section 2 of Section 7B of *The Indian Telegraph Act, 1885* mandates that an Award by the Arbitrator shall not be questioned in any court. To hold so, reliance is placed upon Supreme Court decision in *M.L. Jaggi Vs., MTNL & ors.* AIR 1996 SC 2476.

The challenge to the impugned order in this appeal by learned counsel for appellant is on the ground that in view of decision in *J.K. Mittal Vs. Union of India & ors.* AIR 2012 Delhi 94, the impugned order is liable to be set aside, as respondent-MTNL is not a telegraph authority

and so, objections filed by appellant were maintainable.

Learned counsel for respondent supports the impugned order and places reliance upon another decision of Supreme Court in *M.L. Jaggi Vs. MTNL & ors.* AIR 1996 SC 2476 to submit that this decision has been reiterated in *Telecom District Manager, Goa & ors. Vs. V.S. Dempo & co. & ors.* AIR 1996 SC 1545. Attention of this Court is drawn to Sub-Sections 2 & 6 of Section 3 of *The Indian Telegraph Act, 1885* to submit that respondent-MTNL is a delegated 'telegraph authority' and so, the remedy available to appellant is to challenge the Award by way of a writ petition under Article 226 of *The Constitution of India*, as indicated in *M.L. Jaggi (supra)*.

Upon hearing both the sides and on perusal of impugned order, material on record and the decisions cited, I find that respondent exercises delegated powers of 'telegraph authority'. This is so evident from Sub-Sections 2 & 6 of Section 3 of *The Indian Telegraph Act, 1885*. Reliance placed by appellant's counsel upon decision of a Single Bench of this Court in *J.K. Mittal (Supra)*, is of no avail for the reason that the said decision is based upon concession extended by counsel for respondent and is not on merits. Supreme Court in *M.L. Jaggi (supra)* has clearly declared that an Award under *The Indian Telegraph Act, 1885* is final and the remedy against an Award passed under the aforesaid Act, lies under Article 226 of *The Constitution of India*.

In the considered opinion of this Court, the impugned order suffers from no illegality or infirmity and hence, this appeal is dismissed with liberty to appellant to challenge the Award of 8th July, 2013 by recourse to Article 226 of *The Constitution of India*.

At this stage, learned counsel for appellant submits that this appeal be treated as a writ petition against the Award of 8th July, 2013 and the objections filed by appellant be treated as grounds to challenge the aforesaid Award. Such a prayer is made by appellant's counsel to meet the objections of delay and laches in filing the writ petition.

Since appellant was ill advised to challenge the impugned order, therefore, such a course otherwise also cannot be permitted for the reason that the grounds to challenge the impugned Award by way of a writ petition under Article 226 of *The Constitution of India* are not the same as in this appeal. Needless to say that appellant shall have the benefit of Section 14 of *The Limitation Act* as and when the objection of delay and laches is raised and considered.

This appeal and the application are disposed of with clarification that neither the impugned order nor this order has touched upon the merits of the Award in question, which ought to be now assailed by appellant by recourse to Article 226 of *The Constitution of India*.

(SUNIL GAUR)
JUDGE

SEPTEMBER 27, 2016

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