

\$~3

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

+ **FAO(OS) 59/2017 & CM No.7904/2017**

CREATIVE CONSORTIUM Appellant
Through: Mr. Arjun Sehgal, Adv.

Versus

AIR FORCE NAVAL HOUSE BOARD
& ANR Respondent
Through: Mr. Vivekanand, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **01.12.2017**

1. This appeal assails the order dated 25th November, 2016 passed by the Id. Single Judge allowing the OMP No.349/2008 which was filed by the respondents herein under Section 31(3) of the Arbitration and Conciliation Act, 1996 assailing the award dated 27th March, 2008 passed by the Arbitral Tribunal in favour of the appellant herein.

2. The ground on which the appeal is primarily pressed on the fact that the matter was placed in final category on 13th April, 2009 for argument and the matter remained there for several years.

3. Learned counsel for the appellant herein submits that on 25th November, 2016 he was watching till item No.105 reached. However, he was under the *bona fide* impression that OMP No.349/2008 would not reach that day and failed to keep track of

the matter. As a result, ld. Single Judge proceeded with the matter and OMP No.349/2008 was taken up and allowed in favour of the respondent herein.

4. Be that as it may, in view of the aforesaid *bona fide* expectation of the ld. counsel for the appellant that the matter would not reach, he was not present when the matter was taken up and the said order dated 25th November, 2016 was passed in favour of the respondent herein.

5. It appears that ld. counsel for the appellant herein overlooked the fact that effectively the matter was at serial No.4 so far as the hearing on 25th November, 2016 is concerned.

6. We are satisfied that that the non-appearance on behalf of the appellant on 25th November, 2016 was neither deliberate nor *mala fide*. Explanation tendered by the ld. counsel for the appellant is also reasonable and we accept the same.

7. In view of the above, the order dated 25th November, 2016 passed by the ld. Single Judge in OMP No.349/2008 is hereby set aside and quashed.

The matter is remanded back to the ld. Single Judge and the same be listed before the appropriate roster bench on 18th December, 2017 for directions.

8. The parties shall ensure that they shall be represented on the next date of hearing.

The appeal is allowed in the above terms.

CM No.7904/2017

9. In view of the above order passed in FAO(OS) No.59/2017, this application does not survive for consideration and the same is accordingly dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 01, 2017/pmc

FAO(OS) No.59/2017

Pg.3 of 3