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

\+ **FAO No. 219/2017**

% **15th May, 2017**

RAJESH KHANNA ..... Appellant

Through: Mr. Mahendra Rana, Advocate.

versus

SACHIN GOEL ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.18284/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.18286/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of two days in filing the appeal is condoned.

C.M. stands disposed of.

FAO No.219/2017 and C.M. No.18285/2017 (stay)

3. By this first appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') the appellant and who was the petitioner in the court below who had filed

objections under Section 34 of the Act, impugns the judgment dated 21.1.2017 by which the objections under Section 34 of the Act have been dismissed.

4. The facts of the case are that the respondent/claimant filed an arbitration claim before the Delhi Hindustani Mercantile Association on account of having supplied goods/textiles to the appellant. The appellant was admittedly served in the arbitration proceedings. Appellant appeared and filed his written statement. Appellant continued to appear thereafter in the arbitration proceedings till the stage of cross-examination of the witness of the respondent and who was partly cross-examined. The appellant for some reason thereafter failed to appear and consequently the arbitration tribunal after examining the evidence on record, alongwith the deposition of the respondent which proved the invoices, delivery challans and the transportation receipts, allowed the claim petition and passed the Award dated 4.9.2015.

5. Once the appellant does not appear in the arbitration proceedings and the arbitration claim is allowed by an Award, inasmuch as there is no evidence of the appellant herein in the arbitration proceedings and there is no complete cross-examination of the deposition of the witness of the respondent/claimant, thus in such

circumstances the Arbitrator was justified in believing the claim of the respondent and consequently passing the Award dated 4.9.2015. The Award has been passed for a sum of Rs.17,83,530/- alongwith interest at 15% per annum from 1.3.2009.

6. Learned counsel for the appellant argued on merits that goods were not received by the appellant and an endeavour was made to that this Court should pursue various documents for showing that the appellant had not received goods, however, this Court is not the Arbitrator before whom the evidence had to be led by the appellant to show that he had not received goods including by completely cross-examining the deposition of the witness of the respondent, and which was not done. I therefore cannot agree that the Award is not correct on merits as the scope of a Court under Section 34 of the Act is not to sit as an appellate court over the award.

7. It is also argued on behalf of the appellant that there is no arbitration clause, however, it is seen that on each of the bills there is an arbitration clause to refer the disputes to arbitration and the court below has thus accordingly rejected this contention by making the following valid observations:-

> "The first submission of the petitioner herein is that there was no arbitration agreement in between the parties to the present petition. It has to be seen that various invoices/bills were placed on record by the respondent herein

> and Sh. Madhusudan Gupta, the witness of the respondent had categorically stated that the invoice nos.2812, 2823, 2834, 2822 and 2922 were bearing the signatures of the petitioner herein. Along with the invoices, the delivery challans and transport receipts were also placed on record by the respondent herein before the Ld. Arbitrator. There is a clause pertaining to the arbitration on the invoices in clear cut and unequivocal terms. Neither the aforesaid witness was cross examined by the petitioner herein nor any evidence in defence was led. As such, I have no hesitation to hold that the submission of the petitioner herein to the effect that there was no arbitration agreement at all is fallacious. I am also of the opinion that the submission of the petitioner herein to the effect that the invoices and delivery challans etc. placed on record by the respondent herein before the Ld. Arbtirator were forged and fabricated is also devoid of any merits because nothing was proved on record by the petitioner herein before the Ld. Arbitrator."

8. I would also like to refer to the following para of the court below and which shows that the Arbitrator after giving great indulgence to the appellant proceeded *ex-parte* against him i.e only after many adjournments and ultimate non-appearance:-

> "Perusal of the record of the file of the Ld. Arbitrator further reveals that Sh. Madhusudan Gupta appeared as a witness on behalf of the respondent herein and he was cross examined in part. Thereafter, the mater was fixed for further cross-examination on 07.09.2013 but on 07.09.2013, 12.10.2013 and 09.11.2013, the petitioner herein kept on seeking the dates only. Perusal of the record further reveals that thereafter two applications, one U/o 11 Rule 12 of the CPC and another application U/s 151 of the CPC were filed. The applications were kept for arguments and the reply was filed by the respondent to the aforesaid applications. On 07.12.2013, the matter was again deferred for cross-examination of Sh. Madhusudan, the witness of the respondent herein. Thereafter; on 19.07.2014, 23.08.2014, 27.09.2014, 01.11.2014, 29.11.2014, 17.01.2015, 14.02.2015 and 14.03.2015, the matter was constantly adjourned at the request of the Ld. Counsel for the petitioner or at the request of the petitioner. But ultimately, when after seeking so many dates, the petitioner stopped appearing before the Ld. Arbitrator, the right of cross-examination was closed and the matter was fixed for final arguments."

9. I however completely agree with one argument urged on behalf of the appellant that the rate of interest granted at 15% per annum is extremely exorbitant in today's age and date and Supreme

Court has in various judgments being ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and Others, (2005) 6 SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181, Rajasthan State Road Transport Corpn. v. Indag Rubber Ltd., (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Another, (2007) 2 SCC 720*** and ***State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited (2009) 12 SCC 1*** held that since the interest regime has come down, Courts must refrain from awarding high rate of interest.

10. Accordingly in the interest of justice I order that the rate of interest payable under the Award will not be 15% per annum but will be 6% per annum simple, and for the period which is otherwise mentioned as per the impugned Award.

11. Appeal is accordingly dismissed however with the limited relief being granted to the appellant with regard to rate of interest.

MAY 15, 2017 **VALMIKI J. MEHTA, J**
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