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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(T) 52/2015

SANJAY KUMAR RAY

..... Petitioner

Through: Mr. Pratap Sahani with M. Padhi,
Advocates for Applicant in IA No. 14819/2016.

versus

USHA RANI

..... Respondent

Through: Mr. Amit Chadha with Mr. R.K. Singh
and Mr. Atin Chadha and Mr. Deepak Goel,
Advocates.

And

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O.M.P.(T) 4/2016

SANJAY KUMAR RAY

..... Petitioner

Through: Mr. Pratap Sahani with M. Padhi,
Advocates for Applicant in IA No. 14817/2016.

versus

USHA RANI

..... Respondent

Through: Mr. Amit Chadha with Mr. R.K. Singh
and Mr. Atin Chadha and Mr. Deepak Goel,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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28.03.2017

IA No. 14819/2016 (restoration) in OMP (T) 52/2015

IA No. 14817/2016 (restoration) in OMP (T) 4/2016

1. For the reasons stated therein, these applications are allowed. The order dated 15th February 2017 is recalled and the petitions are restored to their original files.

OMP (T) 52/2015 & OMP (T) 4/2016

2. With the consent of learned counsel for both the parties, the matter has been heard finally.

3. The grievance made by learned counsel for the Petitioner is that the Arbitrator was appointed unilaterally without notice issued to the Respondent. On the other hand learned counsel for the Respondent points out that the Petitioner did participate in the arbitral proceedings and even he had paid fees to the learned Arbitrator. This is however disputed by learned counsel for the Petitioner.

4. In any event it appears that the arbitration proceedings were in progress prior to the present petitions being filed before the Court.

5. Learned counsel for the Petitioner has a grievance that the learned arbitrator may not be independent and therefore prays that another arbitrator should be appointed.

6. It is seen that the challenge by the Petitioner to the arbitrator were rejected by the learned Arbitrator by an order dated 26th September 2015. In terms of Section 13 (4) of the Arbitration and Conciliation Act, 1996 ('Act') if the challenge procedure fails, the Arbitrator shall continue and it will be open to the aggrieved party to await the Award to raise a ground in that regard at the

stage of challenging the Award, if at all, under Section 34 of the Act. Consequently, it is not possible for this Court, in the present petitions, to terminate the mandate of the Arbitrator.

7. It is then submitted that the Petitioner's defence in the arbitration proceedings was struck off by the learned Arbitrator. Learned counsel for the Respondent points out that despite several opportunities, no statement of defence was filed by the Petitioner.

8. Considering the facts and circumstances of the case, it is directed that one last opportunity should be given to the Petitioner to file his statement of defence in the arbitration proceedings. It is directed that the Petitioner will now file statement of defence in the arbitration proceedings on or before 24th April 2017. No further time will be granted for that purpose. The order dated 15th January 2016 passed by the Arbitrator in the proceedings in relation to which OMP (T) No. 4 of 2016 has been filed, is hereby set aside.

9. Both parties will extend their full cooperation to the learned Arbitrator who will endeavour to conclude the arbitration proceedings and pass an Award within a period of six months from 24th April 2017.

10. The petitions are disposed of in the above terms. Order be given *dasti*.

S.MURALIDHAR, J

MARCH 28, 2017

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