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

+ **O.M.P. 3/2018**

PREETI JAIN

..... Petitioner

Through: Mr Avadh Kaushik and Mr Devashish
Maharishi, Advocates.

versus

RAKESH JAIN

..... Respondent

Through: Son of the respondent in person.

AND

+ **O.M.P. 4/2018**

YOGESH JAIN

..... Petitioner

Through: Mr Avadh Kaushik and Mr Devashish
Maharishi, Advocates.

versus

RAKESH JAIN

..... Respondent

Through: Son of the respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.02.2018

IA No. 1367/2018 in O.M.P.3/2018

IA No. 1370/2018 in O.M.P.4/2018

1. Exemptions are allowed, subject to all just exceptions.
2. The applications stand disposed of.

O.M.P. 3/2018 and IA Nos. 1368/2018 & 1369/2018

O.M.P. 4/2018 and IA Nos. 1371/2018 & 1372/2018

3. The petitioners have filed the present petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an order dated 07.09.2017 (hereafter 'the impugned order') passed by the Arbitrator pursuant to an application filed by the respondent under Section 27 (5) of the Act.
4. The petitioners in the above petitions are husband and wife.

5. The petitioners state that Sh Yogesh Jain (the petitioner in O.M.P No. 4/2018) had certain disputes with Sh Rakesh Jain (the respondent) and, accordingly, the said parties agreed to appoint Sh Onkar Mal Jain, who is their maternal uncle (*Mama*), to act as a Mediator to resolve their disputes. It is stated that the said parties also executed a written document captioned “*Panch Niyukti Patra*” dated 07.06.2002. According to the petitioners, the said disputes were settled and a settlement deed (*Aapsi Samjhauta Aalekh*) dated 08.06.2002 was also executed.

6. The petitioners state that certain orders were passed by Sh Onkar Mal Jain in 2004. Thereafter, on 01.04.2010, he passed an interim award, which was also forwarded to Sh Yogesh Jain subsequently.

7. It is stated that Sh Rakesh Jain (the respondent) and his family members filed an execution petition before this Court bearing Ex. P. No. 308/2011 against the petitioners as well as their son seeking enforcement of the said interim award dated 01.04.2010.

8. The petitioners state that on receipt of the complete set of the execution petition, the petitioners filed a petition under Section 34 of the Act (OMP 455/2012 captioned “*Yogesh Jain & Anr. v. Rakesh Jain & Ors.*”) impugning the interim award dated 01.04.2010. The said petition was dismissed by a Coordinate Bench of this Court on 18.04.2017 as being barred by limitation. The petitioners have preferred an appeal against the said decision [FAO (OS) 148/2017 captioned “*Yogesh Jain & Anr. v. Rakesh Jain & Ors.*”] which is pending disposal before the Division Bench of this Court.

9. In the meantime, Sh Rakesh Jain filed an application dated 21.07.2017 before Sh Onkar Mal Jain seeking permission to proceed against

the petitioners under Section 27(5) of the Act for wilful contempt of the order dated 14.10.2004 and interim award 01.04.2010.

10. The said application was allowed by the impugned order and Rakesh Jain has been granted permission to proceed in accordance with law.

11. Plainly, the order/communication dated 07.09.2017 – which is impugned in the present petitions – is not an arbitral award and, therefore, the present petitions under Section 34 of the Act are not maintainable.

12. Section 5 of the Act expressly provides that “*notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part*”. There is, thus, no scope for interference with any order or any communication made by the arbitrator in terms of Section 27 of the Act. However, that does not mean that the petitioners are left without any remedy. The question whether any punitive action is required to be taken would be considered by this Court in an appropriate proceedings.

13. In view of the above, the present petitions are dismissed. It is, however, clarified that all rights and contentions of the parties remain reserved. The dismissal of these petitions will not preclude the petitioners from contesting any proceedings that may be instituted pursuant to the order dated 07.09.2017.

14. The petitions and all the pending applications are disposed of in the above terms.

VIBHU BAKHRU, J

FEBRUARY 21, 2018/pkv