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

+ **O.M.P. (COMM) 211/2016**

AMRIK SINGH & ANR.

..... Petitioners

Through: Mr R.K. Dhawan, Ms Richa
Dhawan, Mr V.K. Teng and Mr
Anuj Chaturvedi, Advocates.

versus

TRUEBLUZ CLOTHING

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.03.2018

VIBHU BAKHRU, J

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 14.10.2014 (hereafter 'the impugned award') passed by the Arbitral Tribunal comprising of Sh Rajesh Kumar, the Sole Arbitrator.

2. The petitioners claim that they had no notice of the constitution of the said Arbitral Tribunal. It is further claimed by the petitioners that the Arbitral Tribunal has no jurisdiction to proceed with the matter, as it was not constituted with the concurrence or consent of the petitioners.

3. Although, the notice of the present petition was served on the

respondent, the respondent has not entered appearance. It is also seen that none had appeared on behalf of the respondent on the last date as well. In the circumstances, this Court does not consider it apposite to defer the hearing of the present petition any further.

4. Briefly stated, the relevant facts necessary to address the controversy are that the petitioners are two of the co-owners of a shop being Shop No. 24, Gole Market, Ludhiana (hereafter 'the premises'). The petitioners claim that they had leased the premises to the respondent at a rental of ₹75,000/- per month on the terms and conditions as mentioned in the lease deed dated 23.05.2011. The petitioners further claim that they had also agreed to invest a sum of ₹ 20 lakhs as a "silent financier", in the respondent's business to be conducted from the premises. A Memorandum of Understanding dated 23.05.2011 (hereafter 'the MoU') was also executed between the petitioners and the respondent whereby the respondent agreed to pay a sum of ₹40,000/- to the petitioners and other partners along with a commission at the rate of 3% on the net sales effected by the respondent.

5. The petitioners claim that the respondent failed to pay the lease rental and monthly remuneration regularly and, thus, there are arrears of rent and remuneration, which are recoverable from the respondent.

6. It is stated that the respondent vacated the premises in question on 31.12.2012. The petitioners claim that during the subsistence of the lease, the respondent had issued certain cheques in favour of the

petitioners towards the arrears of rent, which were dishonoured on presentation on account of insufficiency of funds.

7. It is further claimed that a criminal complaint under Section 138 of the Negotiable Instrument Act, 1881 has been instituted against the respondent in the court of Sub Divisional Judicial Magistrate, Zira (Punjab) and certain other complaints have also been instituted in the Court of Sub Divisional Judicial Magistrate, Moga (Punjab).

8. The petitioners received a notice dated 14.08.2012 from one Sh Sagar Saxena (Advocate) claiming to be a Sole Arbitrator appointed by the respondent in terms of the MoU calling upon the petitioners to appear before him on 21.09.2012. The petitioners responded to the said notice by a letter dated 28.08.2012 sent by their Advocate, *inter alia*, stating that Sh Sagar Saxena could not have been appointed as an Arbitrator, as the petitioners have not consented to such appointment. The petitioners claim that they did not receive any further communication from Sh Sagar Saxena thereafter.

9. The petitioners claim that they received another notice dated 18.02.2013 from the advocates of the respondent calling upon the petitioners to pay damages to the extent of ₹20 lakhs and further stating that if the said damages were not paid, the respondent would institute civil proceedings for damages and other consequential reliefs. The petitioners responded to the said notice by a notice dated 18.03.2013 disputing the claims made by the respondent.

10. Thereafter, the petitioners received another notice dated

21.07.2014/03.08.2014 from Sh Rajesh Kumar, Advocate informing the petitioners that he had been appointed as the Sole Arbitrator by the respondent and calling upon the parties to appear before him on 02.08.2014. The petitioners responded (through their counsel) to the aforesaid notice by a letter dated 11.08.2014 clearly stating that the petitioners had not consented to the appointment of Sh Rajesh Kumar as an Arbitrator.

11. The petitioners claim that thereafter they did not receive any notice or further communication from Sh Rajesh Kumar.

12. Apparently, Sh Rajesh Kumar published the impugned award. The petitioners claim that the impugned award was not communicated by the said Arbitrator to the petitioners.

13. The respondent filed an execution petition (Ex. No. 109/2015) before this Hon'ble Court on 9.03.2015 seeking to enforce the impugned award. The petitioners filed their objections in the said execution proceedings challenging the impugned award which was delivered ex-parte. The said application was withdrawn with liberty to take recourse to Section 34 of the Act. The petitioners also filed an application under Order IX Rule 13 CPC before the Arbitrator, which was dismissed on 15.01.2016.

14. The respondent has filed a reply to the present petition disputing the contention that the impugned award was not delivered to the petitioner. The respondent claims that the impugned award was sent to the petitioner through courier on 22.10.2014. The respondent further

claims that the Arbitral Tribunal had issued notices to the petitioners but since the petitioners had not appeared before him, the petitioners were proceeded ex-parte.

15. The principal case set up by the respondent is that the petitioners were duly aware of the Arbitral Proceedings as well as the Arbitral Award but had deliberately avoided the said proceedings. The respondent also claims that since the present petition is beyond the period as specified under Section 34(3) of the Act, the same is liable to be dismissed summarily.

Reasons and Conclusion

16. The petitioners have made a categorical statement that they were not served with the impugned Award. Although, the said contention is disputed by the respondent, there is no evidence or material on record to show that the impugned award was served on the petitioners. In these circumstances, the averments made by the petitioners that the impugned award was not served on them cannot be rejected. It follows from the same that the present petition cannot be dismissed as being beyond the period specified under Section 34(3) of the Act, since the said period would commence only once duly signed award is served on the petitioners.

17. There is also no material on record to establish that the petitioners had consented to the appointment of Sh Rajesh Kumar as the sole arbitrator. The respondent also does not specifically dispute, in its reply, the assertion that the petitioners had not consented to the

appointment of Sh Rajesh Kumar as an arbitrator.

18. The petitioners have produced the copy of the MoU which includes an arbitration clause. The said clause is set out below:-

“That it has been mutually agreed between the Brand Owner and Exclusive Dealer that all disputes or differences of any type can only be settled or sorted out through a mutually selected arbitrator strictly as per the arbitration and conciliation Act. The Brand owner and the Exclusive Dealer undertakes not to file any other civil or criminal litigation against each other pertaining to any transaction arising out of the present agreement. The arbitration proceedings will only be held in Delhi.”

19. It is apparent from the above that only a mutually acceptable arbitrator could be appointed to adjudicate the disputes between the parties. Since it is not disputed that the appointment of Sh Rajesh Kumar was without consent of the petitioners, it is obvious that he would have no jurisdiction to act as an arbitrator and, thus, the impugned award is of little value.

20. In view of the above, the present petition is allowed and the impugned award, being wholly without jurisdiction, is set aside.

21. The petition and the pending application are disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 08, 2018/pkv