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

Date of Decision: 9.10.2018

+ ARB.P. 546/2018

RAJ KUMAR BHARDWAJ

..... Petitioner

Through Mr. Vaibhav Tiwari, Adv.

versus

RITESH SHARMA & ANR.

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 11(6) read with Section 14 and 15 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act') seeking appointment of an Arbitrator in place of a named Arbitrator, one, Sh. Sanjeev Gulati.

2. It is the case of the petitioner that the named Arbitrator has failed to act for the past three years and, therefore, his mandate ought to be terminated in terms of Section 14 and 15 of the 1996 Act.

3. Notice in this petition was issued on 1.8.2018.

3.1 The record shows that the respondents have been served.

3.2 Despite service, there is no representation on behalf of the respondents.

4. It appears that the petitioner has also taken recourse to a Section 9 petition, which is pending adjudication before the District Court, Tis Hazari.
5. Apparently, the petitioner and the respondents entered into an agreement dated 22.4.2014 for re-building and re-construction of a property located at 3172, (Old no. 1627), in Ward VI, Mohalla Dassan, Charkhewalan, Hauz Qazi, New Delhi-110006.
6. The petitioner appears to have been in possession of two rooms and a “dallan” on the ground floor of the old superstructure located at the said premises.
7. Since the respondents wanted to bring down the superstructure and re-build the same, they entered into the aforementioned agreement with the petitioner for re-construction of a new superstructure on the said premises.
8. The petitioner in pursuance of the aforementioned agreement vacated and in consideration thereof was to be handed over the residential premises admeasuring 75 sq yards on the fourth floor of the newly built superstructure. The residential premises were to comprise three rooms, toilet, kitchen and a washroom.
- 8.1 Towards security, the petitioner was given a cheque in the sum of Rs.25 lacs.
9. These aspects of the matter are recorded in clause 1, 2 and 9 of the agreement. The agreement also spells out the fact, something which is not disputed before me by the counsel for the petitioner, that the petitioner was, in fact, residing in the old superstructure in his capacity as a tenant.
10. Learned counsel for the petitioner says that the petitioner’s status as a tenant was to be protected till such time the respondents hand over, in terms of clause 4 of the agreement, the residential premises to the petitioner in the

new super structure, *albeit*, in the capacity of an owner.

11. According to the petitioner, though the superstructure has been built, neither has the petitioner been given possession nor a Sale Deed has been executed, as agreed to, under the agreement obtaining between the parties.

12. It appears that the petitioner issued a legal notice in that behalf on 21.9.2015, to which no response was received by the petitioner.

13. In order to protect his rights, the petitioner has also, as indicated above, filed a petition under Section 9 of the 1996 Act, which is pending adjudication.

14. In the Section 9 petition, the respondents have entered appearance and filed their reply.

15. Furthermore, the record shows that the petitioner vide communication dated 26.11.2015 triggered the arbitration proceedings. This communication was sent to the named Arbitrator Mr. Sanjeev Gulati.

16. It appears that Mr. Sanjeev Gulati has taken no active steps in the proceedings with regard to adjudication of disputes between the Arbitrators.

17. In these circumstances, and especially given the fact that the respondents have chosen not to appear in this Court, I am inclined to allow the prayer made in the instant petition.

18. Accordingly, the mandate of Mr. Sanjeev Gulati is terminated.

19. Mr. B.L. Garg, former Additional District Judge, (Cell no.9810827815), is appointed as an Arbitrator.

20. The learned Arbitrator will be paid fees as per the provisions of the Fourth Schedule of the 1996 Act.

21. The Registry will despatch a copy of this order to the learned Arbitrator as well as to the respondents.

22. The petitioner will also file a copy of this order in the concerned Court where Section 9 petition has been moved and are pending adjudication.

RAJIV SHAKDHER, J

OCTOBER 09, 2018

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