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

+ O.M.P. (COMM) 370/2018

SH. ANUP N KOTHARI & ANR. Petitioners

Through: Mr.Sanjay Jain, Sr. Adv. with
Ms.Anusuya Salwan, Ms.Sneh Suman, Ms.Adrija
Thakur, Ms.Nikita Salwan, Mr.Sumit, Ms.Shreya
Sharma, Advs.

versus

ROOPAK N. KOTHARI & ANR. Respondents

Through: Mr.Vijay K.Sondhi, Mr.Nakul Sachdeva,
Mr.Karan Chopra, Ms.Nayamai Sistani, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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30.08.2018

IA 11585/2018

Exemption allowed subject to all just exceptions.

OMP(Comm.) 370/2018 & IA 11586/2018

Issue notice. Mr.Vijay K.Sondhi, Advocate accepts notice on
behalf of the respondents.

With the consent of the parties, the petition has been taken up
for final hearing at this stage itself.

This petition under Section 34 of the Arbitration and
Conciliation Act, 1996(hereinafter referred to as the 'Act') has been
filed by the petitioners challenging the Interim Award dated 18th July,
2018 passed by the Sole Arbitrator adjudicating the disputes that have
arisen between the parties in relation to the Partnership Deed dated 1st
April, 2003.

By way of the Interim Award, the Arbitrator has given the following findings, which are under challenge:

*“36. The explicit term in the partnership is that the partnership is AT WILL. It is further qualified that it is liable to terminate by mutual agreement at any time. In other words, the partnership deed expressly makes a provision for the determination of the partnership. No doubt, there is no provision in the partnership deed for the duration of the partnership deed but there is an express provision for the determination of the partnership and applying the ratio of the decision of Supreme Court in **Karumuthu Thiagarajan Chettiar’s case (supra)**, the partnership is not a partnership at Will, as defined under Section 7 of the Partnership Act.*

37. In view of the aforementioned conclusion, there is no manner of doubt that on the Claimants having been served notice, the same has to be treated as a notice of retirement from the partnership and not a notice for dissolution and consequently in view of the retirement the remaining partners, namely, Respondents could continue the partnership business.

38. In view of the above, first point is held in negative that the partnership in terms of the partnership deed dated 01.04.2003 has not been dissolved by notice dated 18.10.2012. As the first point has been held in negative, it is held that irrespective of the notice date 18.10.2012, the Respondents as surviving partners could continue the partnership business. Ordered accordingly.”

The learned senior counsel for the petitioners submits that even if the partnership was not to be considered as a partnership at Will, the correspondence exchanged between the parties pursuant to the intent of the petitioners to dissolve the partnership firm as expressed

in their letter dated 18th October, 2012, would show that the respondents agreed to the request, resulting in dissolution of the firm.

He further submits that even otherwise, only because the partnership has been held not to be a partnership at Will, it would not result in the notice dated 18th October, 2012 of the petitioners to be construed as a notice of retirement.

Counsel appearing for the respondents fairly admits that these two issues have not been discussed in the Impugned Award by the Arbitrator, however, the subsequent correspondence of the petitioners and the conduct of the parties shows that the petitioners had the intent to retire from the partnership.

In my opinion, both the above issues do not form part of the Impugned Award. The issue whether the respondents agreed to the request of the petitioners or whether from the correspondence exchanged between the parties, it can be inferred that the petitioners agreed to retire from the partnership firm are issues to be considered by the Arbitrator upon examination of the evidence.

The present petition is disposed of making the above observations, with no order as to costs.

NAVIN CHAWLA, J

AUGUST 30, 2018
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