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

+ **ARB.P. 457/2017**

CHAKRADHARI SUREKHA & ANR. Petitioners

Through: Mr. Kunal Kalra, Adv

versus

PREM LATA SUREKHA & ORS. Respondents

Through: Mr. T.S. Ahuja with Mr. Varun Ahuja, Adv for respondent no. 1
Mr. Kshitij Bhardwaj with Mr. Abhinav Srivastava, Adv for respondent no. 2
Mr. R.K. Srivastava, Adv for respondent no. 3

+ **O.M.P.(I) (COMM.) 30/2017**

SH. CHAKRADHARI SUREKHA & ANR. Petitioners

Through: Mr. Kunal Kalra, Adv

versus

SMT. PREM LATA SUREKHA, & ORS. Respondents

Through: Mr. T.S. Ahuja with Mr. Varun Ahuja, Adv for respondent no. 1
Mr. Kshitij Bhardwaj with Mr. Abhinav Srivastava, Adv for respondent no. 2
Mr. R.K. Srivastava, Adv for respondent no. 4

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **01.08.2018**

ARB.P. 457/2017 & O.M.P.(I) (COMM.) 30/2017

1. This is a petition filed under Section 11 of the Arbitration and

Conciliation Act, 1996.

2. Learned counsel seeks appointment of an arbitrator in terms of Clause 15 of the partnership deed dated 22.07.1974 concerning the partnership firm by the name of M/s Sri Narain Raj Kumar. The partnership firm has been arrayed as petitioner no. 2 in the present petition.

3. To be noted, petitioner no. 1, who, is the main protagonist claims to be the partner of the aforementioned partnership firm along with Ms. Prem Lata Surekha/respondent no. 1.

4. It is the case of the petitioner no. 1 that the partnership firm initially comprised of three partners, these being respondent No.3/Mr. Nitya Nand Yadav, Ms. Prem Lata Surekha/respondent no. 1 and petitioner No. 1 himself.

5. Furthermore, apart from the aforementioned persons, two minor sons of one of petitioner No.1's sibling Mr. K.K. Surekha, along with a minor daughter of another sibling Mr.Raj Kumar Surekha were admitted to the benefits of the said partnership firm.

6. At some point in time, I am informed that a decision was taken to exclude the two minor sons of Mr.K.K. Surekha i.e. Sudhir Kumar and Sandip Kumar, from the benefits of the partnership firm.

6.1 Resultantly, according to petitioner no. 1, only the minor daughter of Mr. Raj Kumar Surekha i.e., Ms. Rachna (now Mrs. Rachna Kedia) was the only person, who, continued to enjoy the benefits of the aforementioned partnership firm.

7. Petitioner no.1 takes the stand that this partnership firm continues to exist and that he had never resigned from the said firm.

8. At the heart of the dispute between the parties, is an immovable property which is located in Naraina, Delhi.

8.1. This property, evidently, was acquired via a perpetual lease deed dated 24.01.1980 (in short 'lease deed') and is situate at Plot no. 10, Block No. Y, Naraina Warehousing Scheme, Delhi (in short "subject property").

9. The subject property, as per the said lease deed, admeasures about 450 sq yards. Petitioner no. 1 alleges that Vishnu Kumar Surekha, who, is his brother and husband of respondent no. 1 attempted to sell a part of the subject property i.e., 150 sq yards, to, one, Mr. Umesh Garg.

10. It is further alleged that Umesh Garg found out after he had paid a substantial amount of Rs. 30 lakhs to Mr. Vishnu Kumar Surekha, the husband of respondent no.1/Ms. Prem Lata Surekha that the subject property was not owned by him.

10.1 Consequent thereto, it appears Mr. Umesh Garg lodged a complaint with the police.

10.2 It is stated by petitioner no. 1 that an FIR was lodged based on the complaint of Mr. Umesh Garg.

11. Mr. Kunal Kalra, Advocate, who, appears for the petitioners, in support of his submissions, relies upon the status report filed by the concerned ACP in the criminal proceedings which emerged out the complaint filed by Mr.Umesh Garg.

12. On the other hand, Mr. Ahuja, Advocate, who, appears for the respondent no. 1/Ms Prem Lata Surekha resist the petition.

12.1 It is his case that respondent no. 1 resigned from the aforementioned partnership firm and that the said firm was reconstituted in February, 1985.

12.2 For this purpose, Mr. Ahuja has drawn my attention to the copy of the partnership deed dated 07.02.1985.

12.3 The said partnership deed is indicative of the fact that Mr. Nitya Nand Yadav and Mr. Vishnu Kumar Surekha were the only partners of the said partnership firm.

12.4 This deed also adverts to the fact that petitioner no. 1 resigned from the partnership firm on 31.08.1984.

12.5 Furthermore, Mr. Ahuja has drawn my attention to yet another deed which is dated 1.11.1988.

12.6 This partnership deed alludes to the fact that Mr. Nitya Nand Yadav had resigned from the partnership firm on 31.10.1988 and that at the relevant point in time, the only partners in the firm were Mr. Vishnu Kumar Surekha and, one, Ms.Parmeshwari Devi.

12.7 I am told that Smt. Parmeshwari Devi is the mother of the petitioner no. 1 and Mr. Vishnu Kumar Surekha.

13. Mr. Kalra, however, says that the partnership deeds referred to by Mr. Ahuja are fabricated and that, petitioner no. 1 never resigned from the partnership firm.

14. It is in this context that the captioned petition for appointment of an arbitrator is filed, as according to petitioner no. 1 disputes have

arisen *vis-a-vis*, the partnership firm i.e., petitioner no. 2.

15. I may also indicate that Mr. Ahuja had drawn my attention to the clause 8 of the partnership firm dated 22.07.1974. Based on the said clause, it was contended that the balance sheets and profit and loss accounts of the partnership firm had to be prepared under the supervision of all partners.

15.1 It is further contended that the balance sheets and profit and loss accounts have been signed by all the partners.

15.2 Mr. Ahuja, however, adds that since petitioner no. 1 resigned on 31.08.1984, balance sheets and profit and loss accounts prepared thereafter, do not bear his signatures.

16. I may also record that the counsel appearing for the respondent no. 2 and 3 say that they have no objection to the prayer made for appointment of an arbitrator in the matter.

17. To be noted, respondent no. 3/Mr. Nitya Nand Yadav expired on 03.06.2003. This fact was, perhaps, not known to the counsel for the petitioners and therefore, an attempt was made to implead the LRs of respondent no.3.

17.1 This is reflected in orders of the Court passed on 27.02.2018 and 22.05.2018.

17.2 I may also record that in order dated 22.05.2018, it has been, inadvertently, recorded that Mr. Shiv Kumar Yadav one of the LRs of Mr. Nitya Nand Yadav had already been arrayed as a party to the present proceedings.

17.3 As noticed above, there was no formal order passed in that

behalf.

17.4 Furthermore, the Court on 22.05.2018 proceeded to implead other LRs of Mr.Nitya Nand Yadav.

17.5 Since, the said observation appears to be an inadvertent mistake and given the fact that Shiv Kumar Yadav is represented by counsel, a formal order is passed in that behalf impleading him as a party to the present proceedings.

18. Having regard to the facts and circumstances set out above, I am of the view that disputes obtain with regard to whether or not, the aforementioned partnership firm i.e., petitioner no. 2, is in existence. However, there is no dispute about the fact that respondent no. 1/Ms.Prem Lata Surekha was a partner in the partnership firm constituted on 22.07.1974.

19. There is also no dispute that an arbitration clause i.e., clause 15, obtains in the said partnership deed.

19.1 Therefore, in my opinion, as prayed an Arbitrator needs to be appointed.

20. The record shows that petitioner no. 1 had issued two notices for appointment of an arbitrator. These notices are dated 23.03.2015 and 12.07.2016.

20.1 Respondent no. 1 resisted appointment of an arbitrator in the matter.

20.2 Clause 15 of the partnership deed dated 22.07.1974 reads as follows:-

“15. Any dispute arising out of this partnership or as to it

interpretation, operations or enforcements of terms of this partnership between parties or their legal representatives shall be referred for adjudication to the arbitrators.”

20.3 As it would be evident upon perusal of the said clause, no one party has the right to appoint an Arbitrator.

20.4 In any case, respondent no. 1 has lost its right to have a say in the matter.

21. Accordingly, Ms. Rekha Sharma, Former Judge, Delhi High Court is appointed as an Arbitrator in the matter.

22. At this stage, counsel for the parties agree that arbitration proceedings be governed by rules and fee structure prescribed by the Delhi International Arbitration Centre.

22.1 It is ordered accordingly.

23. Needless to say, it will be open to the respondents to take up all defences as may be available to them in law.

24. Insofar as the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') is concerned, Mr. Kalra says that this petition can be placed before the learned Arbitrator for passing appropriate orders in exercise of her power under Section 17 of the Act.

24.1 Mr. Kalra, however, says that pending disposal of the petition Mr. Vishnu Kumar Surekha (who, as noted above, is the husband of respondent no. 1/Ms. Prem Lata Surekha) should be restrained from creating third party interest in the subject property.

25. I tend to agree with Mr. Kalra, Accordingly, till the time, the

learned Arbitrator deals with the captioned petition filed under Section 9 of the Act, Mr. Vishnu Kumar Surekha, his agents, employees etc are restrained from creating third party interest in the subject property.

26. Needless to say, the learned arbitrator will give full opportunity to the respondents to have their say in respect of the said petition.

27. Furthermore, the learned Arbitrator, after hearing parties will be free to either affirm or vacate or even vary the interim order passed by this Court.

28. Consequently, the aforementioned petitions are disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

AUGUST 01, 2018

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