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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 687/2017

S. HARINDER SINGH GROVER

..... Petitioner/Relator

Through: Mr. Ravi Sikri, Sr. Adv. with Mr. Ajay
Kumar Porwal & Ms. Parul Sharma, Advs.

Versus

S. NIRMAL SINGH & ORS

..... Respondents

Through: Mr. V.P. Singh, Sr. Adv. with Mr. Sunil
Narula & Ms. Isha Thakur, Advs. for R-
1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

10.07.2018

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1. Contempt is averred of the order dated 10th September, 2012 of this Court in FAO(OS) No.134/2008.
2. Notice of the contempt petition was issued and the senior counsel for the respondents has been appearing.
3. The senior counsel for the petitioner / relator has been heard.
4. The Division Bench of this Court, in the order dated 10th September, 2012 of which contempt is averred, has ordered that the said order shall merge in the order that the Arbitrator was granted liberty to pass.
5. The senior counsel for the petitioner / relator on enquiry as to the order of the Arbitrator from which the appeal aforesaid arises, has drawn attention to the order dated 4th September, 2013 of the sole arbitrator.
6. It is not very clear that the FAO(OS) No.134/2008 aforesaid, of the order dated 10th September, 2012 wherein contempt is averred, was preferred against which order and the senior counsel for the petitioner / relator states that the order against which the said FAO(OS) No.134/2008 was preferred is not available.
7. Be that as it may, I have enquired from the counsel for the petitioner / relator as to how this contempt proceeding is maintainable before this Bench.
8. The arbitral proceedings are still stated to be pending. Ordinarily, contempt of an order of the Court which is merged in the order of the Arbitrator should be agitated

before the Arbitrator only.

9. The senior counsel for the petitioner / relator states that the petitioner / relator did approach the Arbitrator but the Arbitrator vide order dated 5th September, 2017 observed that the Arbitral Tribunal was not in a position to hold any enquiry as to whether any action of the respondent was in contempt of the order of the High Court and whereafter this petition was filed.

10. This Court as far back as in *Sri Krishan Vs. Anand* (2009) SCC OnLine Del 2472 has held that the Arbitral Tribunal is vested with the jurisdiction to enforce its orders under Section 17 of the Arbitration & Conciliation Act, 1996. Section 27(5) was invoked in this regard. Relying on the said judgment in *Santosh Kumar Vs. Sanjay Kumar Chandok* (2016) SCC OnLine Del 6212 it was held that Section 27(5) is an affective alternate remedy to Order XXXIX Rule 2A of the CPC. Supreme Court thereafter in *Alka Chandewar Vs. Shamshul Ishrar Khan* (2017) 16 SCC 119 held the Arbitral Tribunal to be empowered to punish for contempt.

11. It is felt, particularly considering the nature of the contempt alleged, that the Arbitral Tribunal is best suited to deal with the averments of contempt and / or of violation of the order made on an application under Section 17 of the Act and to pass the appropriate orders with respect thereto.

12. The senior counsel for the petitioner /relator, under instructions, withdraws the petition with liberty to approach the Arbitral Tribunal.

13. The senior counsel for the respondents has no objections.

14. The petition is dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2018

‘gsr’..