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

Date of decision: 05.12.2018

+ O.M.P.(T) 7/2018
FIITJEE LTD.

Through

..... Petitioner
Mr. Mukesh M. Goel and Ms. Arti
Rawat, Advs.

versus

DUSHYANT SINGH & ANR.

Through

..... Respondents
Mr. A.K. Pandey and Mr. Amit Kr.
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.: (ORAL)

I.A. 16618/2018

1. Allowed, subject to just exceptions.

O.M.P.(T) 7/2018 & I.A. 16617/2018

2. Apart from the grievance of the petitioner that the arbitration proceedings are not being conducted in a proper manner, it appears that the statutory period of twelve (12) months expired on 27.9.2018.

2.1 Mr. Pandey, who, appears on advance notice on behalf of respondent, does not dispute this aspect.

3. I may only indicate that in order to demonstrate that the arbitration proceedings are not being conducted properly by the learned Arbitrator, reference has been made to the cross-examination of respondents' witness.

3.1 In this behalf, my attention has been drawn to Question no.23 which is replicated at page 33 of the documents.

3.2 A perusal of the same would show that the answer to the question has

not been recorded by the learned Arbitrator.

4. Learned counsel for the petitioner says that the petitioner has not given any consent for extension of the mandate of the learned Arbitrator beyond 27.9.2018.

4.1 Given these circumstances, learned counsel for the petitioner says that he would have no difficulty in the arbitration proceedings continuing, *albeit*, under the aegis of a new Arbitrator.

5. Learned counsel for the respondents says that while in his view the learned Arbitrator's conduct cannot be brought into question, however, in order to hasten the proceedings he would have no difficulty if this Court were to appoint another Arbitrator in place of the incumbent Arbitrator.

6. To my mind, the fact that the learned Arbitrator has not scrupulously recorded the testimony is a matter of some concern.

7. Furthermore, the learned Arbitrator could not have continued with the matter unless the parties mutually agreed to extend the time frame for concluding the arbitration proceeding or one of them had approached the Court for seeking extension of time as provided under Section 29A of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

8. Thus, given the overall circumstances, I am of the view that the best way forward will be appoint a new Arbitrator in the matter.

9. Accordingly, as prayed by counsel for the parties, the mandate of the incumbent Arbitrator is terminated and in his place, Mr. S.K.Tandon, (Cell no.: 9717703864, 9811719886), former Additional District Judge, is appointed as an Arbitrator.

9.1 The Arbitration proceeding will continue from the position it is presently placed.

9.2 The learned Arbitrator will be paid his fee in accordance with the provisions of the Fourth Schedule appended to the 1996 Act.

9.3 The tenure of the arbitration is extended by another six (6) months commencing from 27.9.2018.

9.4 Needless to say, the petitioner will pay the costs already imposed by the incumbent Arbitrator.

9.5 I am told that the total costs has been quantified as Rs.3,000/-. The needful will be done within two weeks from today.

10. In order to expedite the process, the parties and their counsel will appear before the learned Arbitrator on 17.12.2018 at 3:00 p.m.

10.1 In case the aforesaid date is not convenient to Mr. S.K. Tandon, he will fix another date which would be proximate to the date given by the Court.

11. The petition is disposed of in the aforesaid terms.

12. Pending application shall stand closed.

13. *Dasti* under the signature of Court Master.

DECEMBER 05, 2018
rb

RAJIV SHAKDHER, J