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

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Date of Decision: 31st October, 2019

+ O.M.P. (COMM) 242/2016

MUDIT MOHAN MITTAL Petitioner

Through: Mr. S.C. Singhal, Advocate.

versus

RAJESH MOHAN MITTAL Respondent

Through: Mr. Gurpreet Singh Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the award dated 25th January, 2016 passed by the learned arbitrator.
2. The petitioner and the respondent are real brothers and they constituted a partnership firm in the name of M/s Max Can Weld Solution for manufacture and sale of copper wires w.e.f. 11th November, 2005. The terms and conditions of the partnership firm were reduced into writing in a partnership deed dated 17th February, 2006. The aforesaid firm took on rent a factory premises bearing No. S-16, Badli, Industrial Area, Phase-1, Delhi-110042 along with shed and basement on monthly rent of Rs.5,000/- from their father, H.K. Mittal.
3. Disputes arose between the parties with respect to the partnership whereupon the respondent invoked the arbitration and approached this Court for appointment of an arbitrator. Vide order dated 09th March, 2007 in

ARB.P. No.367/2006, this Court appointed Mr. Bakhshi Siri Rang Singh, Advocate as a sole arbitrator to adjudicate the disputes between the parties.

4. Vide award dated 25th January, 2016, learned arbitrator awarded Rs.2,14,378/- to the respondent. The learned arbitrator held the petitioner to be entitled to Rs.17,994/- towards the capital. The learned arbitrator further held that all the assets of the firm be divided equally by the parties. Learned arbitrator held the respondent to be entitled to half of the tenanted premises i.e. S-16, Badli, Industrial Area, Phase-1, Delhi-110042.

5. Learned counsel for the petitioner urged at the time of hearing that two issues were framed by the learned arbitrator on 11th September, 2007. It is further submitted that the respondent amended the statement of claim thereafter but no additional issues were framed with respect to the division of the tenanted premises and, therefore, the impugned award is vitiated on the ground of non-framing of the additional issue.

6. Vide order dated 04th January, 2017, limited notice was issued to the respondent with respect to the division of the tenanted premises. In that view of the matter, the findings of the learned arbitrator on issues No.1 and 2 have attained finality.

7. With respect to the petitioner's objection that no additional issue was framed by the learned arbitrator, the learned arbitrator has observed on page No.7 of the award that no additional issue was framed since the prayer was covered in the third issue of relief. The learned arbitrator further observed that the petitioner stopped appearing after amendment of the claim.

8. This Court is of the view that there is no infirmity in the non-framing of the additional issue since the petitioner stopped appearing before the learned arbitrator and no additional issue was required to be framed in the *ex*

parte proceedings. That apart, there is no infirmity in the well-reasoned decision of the learned arbitrator holding both the parties to be entitled to the half share in the tenanted premises considering that both the parties had equal share in the partnership.

9. There is no infirmity in the award passed by the learned arbitrator. The petition under Section 34 of the Arbitration and Conciliation Act is, therefore, dismissed.

10. At this stage, both the parties present in Court along with their respective counsels agree for reference of this matter to mediation for demarcating the two portions to be divided in terms of the award.

11. List before Delhi High Court Mediation and Conciliation Centre on 08th November, 2019 at 04:00 P.M.

12. Ms. Veena Ralli, Senior Mediator is requested to mediate between the parties in this matter.

13. Both the parties shall produce the site plan along with their proposed demarcation and the photographs before the learned arbitrator.

14. If both the parties are unable to agree on the demarcation of the subject property into two portions, they agree to choose one portion by draw of lots. The learned arbitrator shall consider this in the meditation proceedings.

15. List for reporting outcome of the mediation on 20th December, 2019.

16. Copy of this judgment be given *dasti* to counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

OCTOBER 31, 2019

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