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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (T) (COMM.) 87/2018

PURNANAND

..... Petitioner

Through: Dr.Amit George, Mr.Rajeev Kukmar
and Mr.Rishabh Dheer, Advs.

versus

INDIAN INSTITUTE OF TECHNOLOGY DELHI Respondent

Through: Mr.Arjun Mitra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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09.01.2019

1. This petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking substitution of the Arbitrator appointed by the respondent vide letter dated 15.09.2017 to adjudicate the disputes that have arisen between the parties in relation to the Work Order dated 15.03.2011 placed by the respondent on the petitioner for the work of "Renovation of 123 Nalanda Apartment in West Campus at I.I.T. Delhi".
2. The counsel for the petitioner submits that the Arbitrator has not conducted any arbitration proceeding since her appointment and therefore, the mandate of the Arbitrator is liable to be terminated under Section 14 of the Act.
3. On the other hand, the learned counsel for the respondent submits that the arbitration proceeding itself is not maintainable inasmuch as the

petitioner had invoked arbitration by its letter dated 02.05.2016 pursuant to which, the respondent had appointed the Arbitrator on 06.06.2016. On account of failure of the petitioner to file his Statement of Claim before the Arbitrator and proceeding with due diligence in spite of repeated opportunity, the Arbitrator vide her order dated 18.05.2017 had terminated the arbitration proceedings. The remedy of the petitioner, if any, was in form of challenging the said order under Section 34 of the Act. Instead of taking proper remedy, the petitioner invoked the Arbitration Agreement afresh and made a request to the respondent for appointment of the Arbitrator. Though the Arbitrator was appointed by the respondent, there was no occasion for the Arbitrator to commence fresh arbitration proceeding in that regard. The learned counsel for the respondent further submits that mere act of appointing the Arbitrator on 15.09.2017 does not amount to acquiescence or waiver of the rights which have accrued in favour of the respondent due to termination of the proceedings by the order dated 18.05.2017.

4. Counsel for the petitioner in rejoinder submits that the petitioner had invoked the Arbitration Agreement by letter dated 02.05.2016 pursuant to which the Sole Arbitrator had been appointed by the respondent on 06.06.2016. The petitioner thereafter moved an application seeking production of certain documents from the respondent, however, the said application was dismissed by the Arbitrator on 22.03.2017 calling upon the petitioner to file the Statement of Claim within two weeks therefrom. It is the case of the petitioner that the marriage of the daughter of the petitioner was solemnized on 18.04.2017 due to which the petitioner could not file the Statement of Claim within the time granted by the Arbitrator and instead the petitioner's counsel vide e-mail dated 09.05.2017 sought further extension

of time by two weeks for filing of the Statement of Claim. The said application was heard by the Arbitrator on 11.05.2017 and the Arbitrator was pleased to terminate the arbitration proceedings by the order dated 18.05.2017. Even before the said order was received by the petitioner, the petitioner on 19.05.2017 had filed his Statement of Claim and thereafter, on receipt of the order dated 18.05.2017, filed an application seeking recall of the same on 09.06.2017. By the letter dated 21.07.2017 the petitioner, without prejudice to the application being pending before the Arbitrator, re-invoked the Arbitration Agreement. The respondent, by its response dated 15.09.2017 reappointed the same Arbitrator for adjudicating the disputes that were raised by the petitioner. Learned counsel for the petitioner submits that the petitioner cannot be left remediless inasmuch as the application filed by the petitioner in the earlier arbitration proceedings by the same Arbitrator is not decided, while the Arbitrator having been reappointed by the respondent did not proceed with the fresh reference on the ground that the earlier arbitration proceedings were terminated. In fact, the Arbitrator has not even cared to convey the ground for her not proceeding with the arbitration.

5. I have considered the submissions made by the learned counsels for the parties. The petitioner had rightly, in terms of the judgment of the Supreme Court in *SREI Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd.*, 2017(6) Arb. LR 430 (SC), filed an application before the Arbitrator in the earlier arbitration proceedings seeking recall of the order dated 18.05.2017 terminating the said arbitration proceedings for non filing of the Statement of Claim. The said application was pending adjudication when the petitioner, without prejudice to the said application, re-invoked the

Arbitration Agreement by his letter dated 21.07.2017. The respondent could have rejected the said request on the ground that the earlier arbitration proceedings stood terminated, in which case the petitioner would have been free to either pursue the said application or challenge the order dated 18.05.2017 in accordance with the law. Instead the respondent proceeded to appoint the same Arbitrator afresh by the letter dated 15.09.2017. This has led to an anomalous situation where fresh arbitration proceedings cannot be maintained as earlier arbitration proceedings have been terminated under Section 25 of the Act, however, at the same time, the application of the petitioner seeking recall of the order terminating the earlier proceedings is kept pending and not adjudicated leaving the petitioner remediless in that regard.

6. In similar circumstances, the Supreme Court in *SP Singla Constructions Pvt. Ltd. v. State of Himachal Pradesh and Ors.*, MANU/SC/1416/2018, had in fact set aside the order terminating the arbitration proceedings and directed the respondent therein to appoint a fresh Arbitrator. However, in the peculiar facts of the present case, I deem it proper to direct the Arbitrator to decide the application filed by the petitioner seeking recall of her order dated 18.05.2017 in accordance with the law. The Arbitrator shall decide the application remaining uninfluenced by any observation made in the present order.

7. As the Arbitrator is being directed to adjudicate on the application filed by the petitioner in the earlier reference, the present application seeking termination of her mandate does not survive. However, the petitioner shall be at liberty to re-agitate the issue raised by him in the present petition at a later stage, if so advised or required.

8. The petition is disposed of in the above terms, with no order as to cost.

NAVIN CHAWLA, J

JANUARY 09, 2019/Arya