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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

IA NO: GA/1/2021
In AP/194/2021

INDERJIT MALHOTRA AND ORS.
Versus
CALCUTTA NURSING TRAINING INSTITUTE AND ANR.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 7th December, 2021.

Appearance:
Mr. Jishnu Chowdhury, Adv.
Mr. Debangshu Dinda, Adv.
Ms. Nikita Khaitan, Adv.
Mr. R.K. Mitra, Adv.
...for the petitioner

Mr. Sanjay Kumar Baid, Adv.
Mr. Micky Chowdhary, Adv.
...for the respondent

The Court: The disputes by and between the parties arise out of a Deed of Partnership dated 16th November, 1994. The deed provides for an arbitration clause which is set out hereinbelow:-

“That in case of any dispute or difference in connection with or arising out of the partnership or this deed of partnership, the same shall be referred to the arbitrators under the provisions of the Arbitration Act, 1940.”

It is submitted by the parties that there are disputes and differences by and between the parties which have not yet been resolved.

In an application under Section 9 of the Arbitration and Conciliation Act, 1996 being AP/194/2021, a Co-ordinate Bench had appointed a Receiver for maintaining the records of accounts of the business of the partnership firm post 28th October, 2020 which is the date of death of the deceased partner Raj Malhotra.

It is submitted by the parties that the interim order is still subsisting. I direct that the interim order be extended till the disposal of the Arbitral proceedings.

It is pertinent to mention that during the pendency of the proceedings, an application being GA/1/2021 in AP/194/2021 had been filed for taking an exception to the Report of the Receiver dated 14th September, 2021. It is fairly submitted by the respondent no. 2, that the primary grievance against the Report of the Receiver is directed in respect of a communication dated 2nd September, 2021 handed over to the Receiver by the petitioners. It is further submitted by that no copy of this communication was served on the respondent no. 2. In fact, it is alleged that the receipt of this communication and the incorporation of the same in the Report of the Receiver is wholly without jurisdiction and contrary to the order dated 9th July, 2021.

Be that as it may, since the applications are being disposed of, I am of the view that the Arbitrator will not give any credence to the fact that the Receiver has incorporated the communication dated 2nd September, 2021 in the Report dated 14th September, 2021. However, this will not in any manner whatsoever prejudice the right of the petitioner to rely on the contents of the

letter dated 2nd September 2021 before the Arbitrator and take all points available to him in accordance with law before the Arbitrator. Needless to mention that the respondent no. 2 will have the right to controvert the same before the Learned Arbitrator.

By consent of the parties, Mrs. Manju Bhutoria, Advocate, Member of Bar Library Club is appointed as an Arbitrator in respect of the arbitration clause in the deed dated 16 November 1994. The Arbitrator is at liberty to fix her remuneration and is requested to expeditiously dispose of the arbitration proceedings.

Liberty is granted to both the parties to approach the Learned Arbitrator for appropriate interim measures if so advised in accordance with law.

It is submitted by Mr. Chowdhury that in view of this order his client shall take appropriate steps to withdraw the application under Section 11 of the Act pending before this Hon'ble Court.

In view of the aforesaid directions, GA/1/2021 also stands disposed of.

With the aforesaid directions, AP/194/2021 and GA/1/2021 stand disposed of.

(RAVI KRISHAN KAPUR, J.)

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