

ARB-80-2020 (O&M)

Date of decision : February 24, 2021

BHAGWAN DASS

.....Petitioner

Versus

ASHOK JINDAL AND ANOTHER

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Yashveer Kharb, Advocate for the petitioner.

Mr. Akshay Jindal, Advocate for the respondents.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this petition under Section 11 of the Arbitration and Conciliation Act, 1996 is for appointment of an independent Arbitrator to adjudicate the dispute between the parties. It is submitted that petitioner had sought retirement from the partnership, which was constituted vide deed/s dated 11.07.2007/30.10.2015 (Annexure P2). Admission-cum-retirement partnership deed dated 22.08.2016 (Annexure P3) was drawn up wherein the petitioner sought to retire from the Firm and two new partners were inducted. Subsequently, another memorandum of understanding dated 01.09.2016, Annexure P4 was drawn up and it is specifically mentioned in clause 4 thereof that Admission-cum-Retirement Deed dated 22.08.2016 be read as a part of this MOU which would take effect from the date of execution of Admission-cum-Retirement Deed dated 22.08.2016.

Learned counsel for the petitioner submits that in the civil suit filed by the petitioner seeking rendition of accounts from the respondents an application under Order VII Rule 11 CPC was moved by the respondents, seeking rejection of

the petitioner's plaint on the ground that admission-cum-retirement partnership deed dated 22.08.2016 was drawn up between the parties and in terms of clause 16 thereof, there is a provision for resolution of disputes between them by way of arbitration. Learned Civil Judge (Junior Division), Panipat accepted the application and vide order dated 24.10.2019 rejected the plaint while observing that the parties are bound to resort to Arbitration at the first instance. Accordingly, present petition has been filed.

Respondents have resisted this petition while submitting that admission-cum-retirement partnership deed dated 22.08.2016 came to an end when the matter was finally settled between the parties as per MOU dated 01.09.2016. The said MOU, it is contended, does not have any clause for arbitration. Moreover, there is no such dispute between the parties, which can be referred to arbitration.

I do not find any merit in the argument advanced on behalf of the respondents for the simple reason that it is not open to the party to take vacillating stands as per its convenience. It is a matter of record that respondents before the civil Court have taken a specific stand of arbitral clause. Copy of order dated 24.10.2019 has been circulated on the Whatsapp group created for the purpose of video conferencing today. Print of the same be taken and attached with the file. Perusal of order dated 24.10.2019 passed by the learned Civil Judge (Junior Division), Panipat, rejecting the petitioner's suit for rendition clearly negates the arguments raised on behalf of the respondents.

Keeping in view the facts and circumstances, this petition is allowed.

Mr. Balbir Singh, District & Sessions Judge, (Retired), resident of H.No. 115-SP, Sector 25, Panchkula (Haryana) is appointed as the Sole Arbitrator. However, such

appointment would be subject to the declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

The Arbitrator is to complete the proceedings within the time limit specified under Section 29-A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended to be borne equally by the parties.

Venue of the Arbitration shall be at Chandigarh or at any other place convenient to all concerned subject to discretion of the Arbitrator.

Parties to appear before the Sole Arbitrator on such date and time as nominated by him. Proceedings may also be conducted through video conferencing subject to consensus among all.

Accordingly, this petition is allowed.

February 24, 2021
rts

(Lisa Gill)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No