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

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Date of decision: 04.08.2021

+ **FAO(OS) (COMM) 100/2021 & CM Nos.24176-77/2021**

JASMEET SINGH MARWAH

.....Appellant

Through : Ms. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat,
Mr. Nitesh Kumar Singh and Ms.
Palak Rohemetra, Advs.

versus

CENTRAL COURT HOTEL & ORS.

.....Respondents

Through : Mr. T.K. Ganju, Sr. Adv. with Mr.
Aquib Ali, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

CM No.24177/2021

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 100/2021 & CM No.24176/2021

2. The instant appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996 [in short '1996 Act'] is preferred against the order dated 15.02.2021, and consequential orders dated 19.04.2021 and 05.07.2021, passed by the learned single judge, in a petition, instituted by the respondents, under Section 9 of the 1996 Act.

2.1 To be noted, *via* the order dated 15.02.2021, the learned single judge directed the appellant i.e. Mr. Jasmeet Singh Marwah, the Managing Director of respondent no. 2-company to file an affidavit disclosing the details of his assets. This direction was also issued *qua* respondent no. 2-company.

2.2 Furthermore, the appellant was also directed to disclose his shareholding in respondent no. 2-company, as maintained, during the previous three years. The affidavits were required to be filed within two weeks from the date of the said order. The matter was posted for further proceedings on 19.03.2021.

3. The record shows that the second impugned order, i.e., the order dated 19.04.2021 merely directed the appellant to comply with the court's earlier order dated 15.02.2021. This order, however, came to be passed in the review petition filed on behalf of the appellant i.e. Rev.P.No.55/2021. On that date, a request for accommodation was made on behalf of Ms. Avnish Ahlawat, who appears on behalf of the appellant/review petitioner. The matter was, thus, directed to be re-listed on 05.07.2021.

4. On 05.07.2021, Ms. Ahlawat contended before the learned single judge that she had moved an application for deletion of the appellant from the array of parties in the Section 9 petition.

4.1. Ms. Ahlawat, at this hearing also, reiterated the fact that the review petition filed *qua* the order dated 15.02.2021 was pending consideration.

4.2. The learned single judge in the order passed on 05.07.2021, recorded that *via* his earlier order dated 19.04.2021, he had clarified that the appellant was required to comply with the order dated 15.02.2021, notwithstanding the pendency of the review petition. Furthermore, since there was no

compliance made concerning the directions contained in the order dated 15.02.2021 [which were reiterated in the order dated 19.04.2021], the learned Single Judge called upon the appellant to show cause as to why “*an appropriate punitive action for wilful disobedience of the Court’s orders be not taken against him*”. Besides this, the appellant has also been directed to join the proceedings on next date of hearing.

5. Ms. Ahlawat says that the action filed by respondent no. 1 emanates from a Settlement Agreement dated 10.12.2018 [in short ‘S.A.’] to which the appellant is not party, in his personal capacity.

5.1. To be noted, the SA was executed between the parties via the intercession of the mediator appointed by the Delhi High Court Mediation and Conciliation Centre (in short ‘the Centre’).

6. It appears that the obligations undertaken under the SA were not discharged either by respondent no.2-company or the appellant.

7. The record shows that an undertaking by way of an affidavit was filed by the appellant with the Court, in the Section 9 petition, i.e., OMP(I)(COMM)No.245/2018. The appellant, *inter alia*, stated the following in paragraph 6 of the undertaking: -

“6. That in terms of the aforesaid terms of the settlement agreement dated 10.12.2018, the deponent, being Managing Director of the respondent company (Second Party in the settlement agreement) does hereby unconditionally undertake on behalf of the respondent company to comply with the terms of the settlement agreement dated 10.12.2018.”

8. Given this backdrop, Ms. Ahlawat reiterates her contention, which is that, the appellant, who is the Managing Director of respondent no.2-company, is not personally liable *qua* the obligations which emanate from

the SA. In this behalf, Ms. Ahlawat has drawn our attention to the SA.

9. A perusal of the SA would show that it has been executed between respondent no.1 and respondent no.2-company. Insofar as respondent no.2-company is concerned, the appellant has acted on its behalf and, accordingly, appended his signatures on the SA.

9.1. However, insofar as the undertaking, which has been given by the appellant to the court, is concerned, the argument of Mr. T.K. Ganju, learned senior counsel, who appears on behalf of respondent no.1, is that, the said undertaking makes the appellant personally liable for the obligations of respondent no.2 company.

9.2. Furthermore, Mr. Ganju says that the instant appeal is not maintainable as Section 9 petition is still pending consideration before the learned Single Judge.

10. Having heard learned counsel for the parties and perused the record, in our view, Mr. Ganju is correct, in his contention, that the appeal, at this stage, would not be sustainable. The appellant's grievance, though, is that the review petition and the application filed, for his deletion from the array of parties, has not been disposed of.

10.1 Given the foregoing circumstances, the appeal, in our opinion, cannot be entertained. The appellant, however, will be at liberty to request the learned Single Judge to take up the pending review petition as also the application for deletion from the array of parties.

11. The appeal and the pending application are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 4, 2021

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[Click here to check corrigendum, if any](#)

