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C.O. 3489 of 2022

**Dey Enterprise & Anr
Vs
Debabrata Majumder**

Sk. Md. Galib,
Mr. Swarvanu Saha,

... For the petitioners.

Mr. Ashim Kumar Roy,
Mr. Sutanu Chakrabarti,
Mr. Ashok Kumar Roy,

... for the opposite party.

Sk. Md. Galib, learned advocate appearing for the petitioner, while assailing the impugned order dated 14th November, 2022 passed by learned Arbitrator in AP 499 of 2019, submits that learned Arbitrator has failed to exercise its authority, without deciding the fundamental challenge raised before the Arbitrator, as disclosed in the statement of defence, alleging that the business run by the petitioners is a proprietorship one.

According to Sk. Md. Galib in the statement of defence submitted by the petitioners, there has been reference sufficiently describing the business to be sole proprietorship, upon denying the claim of partnership.

It is contended by Mr. Galib that there cannot be a blanket direction requiring the petitioners to

furnish Income Tax Return for the determination of the issues framed already in the arbitral proceedings. The issues framed are brought to the attention of this Court.

Mr. Galib adverting to order dated 8th September, 2022 passed in the 4th meeting held on 19th September, 2022, submits that books of accounts of the petitioners were felt necessary for the adjudication of entitlement of respective parties, and as such preference was given to the determination of issue no. 2 and issue no. 3, without attaching any importance upon the issue no. 1.

Mr. Galib strenuously argues that without making determination of the first issue, there may not be any decision rendered in the pending arbitral proceedings.

Per contra, Mr. Ashim Kumar Roy, learned advocate appearing for the opposite party disputes with the submission, submitted by Mr. Galib, replying to the effect that the direction to produce Income Tax Return was made by the arbitrator, pursuant to the disclosure made by the petitioners during the cross examination, vide question No. 18 of deposition of Dipankar Dey (RW 1). Supporting the order of the learned arbitrator, learned advocate for the petitioners submits that when the arbitral proceeding has already been set for argument, at this

stage any interference by this Court is not called for, and all the points having already been taken care of by the arbitrator upon framing necessary issues, there is no scope for doubting the authority of the arbitrator with regard to the existing arbitral proceeding.

Having considered the submission of both the parties, it appears that the bone of contention between the parties before the learned arbitrator is with respect to a nature of business conducted by the parties, which the petitioners claimed to be proprietorship, while according to the other side, it is partnership.

It would be relevant here to refer the issues already framed by the arbitrator in connection with the pending arbitral proceedings, which may be set out hereinbelow:

- I. Whether there is a subsisting partnership arrangement and the existence of a valid partnership deed?
- II. Whether the claimant has performed its obligation under the partnership deed and if yes, what reliefs the claimants is entitled too?
- III. Whether the respondent has made excess payment and is entitled to its

counter claim of around Rs. 2.00 lacs?

The framing of issues would be very significant to reveal that the statement of defence submitted by the petitioners has already been taken care of resulting in formulation of a specific issue in Serial No. 1 of the issues "Whether there is a subsisting partnership arrangement and the existence of a valid partnership deed."

Admittedly, the proceeding pending before the arbitrator has already been set for argument.

There has been an order passed by the arbitrator in the impugned order to the effect that it would be open to the parties to bring it on record further transactions of sale, if any, in respect of the said project.

When the matter is set for argument before the arbitrator, at this stage it would be not wise to interfere with the pending arbitral proceedings.

The revisional application thus stands disposed of with a direction upon the arbitrator to decide the issues in accordance with law, giving a scope to the petitioners to agitate the issues pertaining to the nature of the business conducted by the parties, as to whether it is a proprietorship or partnership one.

The connected documents, if there be any still

left unproduced, the same may be permitted to be produced, with an opportunity to other side to controvert the same, and the logical conclusion of the proceedings may be reached at an early date.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)