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

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Date of decision: September 08, 2022

+ **FAO(OS) (COMM) 266/2022 & CM APPL. 39718-39719/2022**

RAE BAREILLY ALLAHABAD HIGHWAY PRIVATE LIMITED

..... Appellant

Through: Mr. Sudhanshu Batra, Sr. Advocate
with Mr. Krishna Vijay Singh, Ms.
Nachiketa Goyal and Ms. Anushka
Dikshit, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Respondent

Through: Mr. Padma Priya, Mr. A.P. Singh,
Ms. Neetika Sharma and Ms.
Akanksha Das, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By the present appeal appellant seeks to challenge order dated 07.09.2022 whereby its petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been dismissed by the Learned Single Judge. Pertinent to note that aggrieved thereby appellant seeks the same reliefs, which have been denied, once again before us.
2. As per the learned Sr. counsel appearing on behalf of the appellant,



the appellant is aggrieved by the Termination Notice dated 25.08.2022 by virtue whereof the respondent has terminated the Concession Agreement dated 31.03.2011. It is further the case of the appellant that the respondent could not have terminated the Concession Agreement which is valid and subsisting for the remaining term of the period.

3. A perusal of the said Termination Notice dated 25.08.2022 reveals that the respondent sent the list of punch items to the appellant and requested it to complete the balance items within *two weeks*. It is a matter of fact that the appellant never objected to the issuance of the same within the said period of *two weeks* and filed the Section 9 petition only after the said period of *two weeks* was over, when it failed to complete the balance items within the stipulated *two weeks* as per the Termination Notice dated 25.08.2022.

4. A further perusal of the Concession Agreement reveals that it is by its very nature determinable, which fact is not disputed by any of the parties before us.

5. Another factor which propped up during the course of arguments is that the learned Sr. counsel for the appellant himself admitted that the appellant has been replaced by an independent third party, interestingly there is no challenge to the said appointment of an independent third party by the respondent till date.

6. As things stand today, it is beyond doubt that the appellant has belatedly approached this Court after a considerable delay.

7. In view of the aforesaid, the present appeal has become infructuous and thus the appellant is not entitled to the reliefs sought at this stage, much less qua stay of the Termination Notice dated 25.08.2022. Prima facie, we feel that no fruitful purpose will be served in granting the reliefs sought at



this belated stage, rather the same will precipitate things, more so, whence an independent third party has already stepped into the shoes of the appellant. Also, grant of reliefs at this stage is likely to hamper the smooth functioning of the ongoing project as it will not be in the interest of general public at large.

8. Further the scope and ambit of granting such reliefs in Section 9 petition are extremely limited, more so whence an independent third party has already been appointed.

9. We find no merit in the present appeal. Accordingly the present appeal, as well as the pending applications therein, are dismissed.

SURESH KUMAR KAIT, J

SAURABH BANERJEE, J

SEPTEMBER 8, 2022/So