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

% Judgment delivered on: 24.04.2023.

+ CM(M) 417/2023 & & CM APPL. 12485/2023, CM APPL.
20151/2023

BHARAT CHUGH

..... Petitioner

versus

M C AGRAWAL HUF

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Vikram Kumar and Mr. Khursheed Ahmed,
Advs.

For the Respondent : Mr. P.K. Agarwal and Mr. Rishabh Tomar,
Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 09.02.2023 passed by the learned Trial Court in ARB Case titled as "*M.C. Agarwal (HUF) Vs. Bharat Chugh & Anr.*" whereby the application under Order XVIII Rule 17 of CPC, 1908 filed by the petitioner before the learned Arbitral Tribunal seeking recall of CW1 for further cross-examination was dismissed.

2. Mr. Kumar, learned counsel appearing for the appellant submits that he has filed certain documents which were filed as part of record in criminal case filed under Section 138 of Negotiable Instruments Act,

1881 and got possession of those only after the cross-examination of CW1 was closed.

3. It was on that basis that the petitioner sought recall of CW1 for further cross-examination.

4. Learned counsel submits that the learned Arbitral Tribunal did not consider the submissions and caused prejudice.

5. *Per contra*, Mr. Agarwal, learned counsel appearing for the respondent relied upon the judgment ***“Bhaven Construction Vs. Executive Engineer Sardar Sarovar Narmada Nigam Limited and Another”*** passed by the Supreme Court reported in (2022) 1SCC 75 and submits that under Article 227 of the Constitution of India, this court ought not to consider the findings of facts of the subordinate authorities and it is only the procedural lapses, if any, which can be considered.

6. Learned counsel also relies upon Section 5 of the Arbitration and Conciliation Act, 1996 and submits that the said provision was considered by the Supreme Court in aforesaid judgment and submits that the non obstante clause was provided to uphold the intention of the legislature, as provided in the Preamble to reduce excessive judicial interference.

7. On that basis, Mr. Agarwal submits that the order passed by the learned Arbitral Tribunal did not suffer any procedural irregularity or judicial impropriety. Moreover, Mr. Agarwal submits that the Arbitral Tribunal was not bound by the provisions of the Code of Civil Procedure, 1908.

8. Be that as it may.

9. However, without prejudice to his rights and contentions and submissions made above, Mr. Agarwal, in order to obviate the delay which may occur in case these petitions are kept pending, agrees for the proposal of recall of CW1 for further cross-examination however, restricted to the documents in the present petition alone.

10. Mr. Kumar undertakes to restrict the cross-examination to the documents at page no. 80-96 of the petition alone.

11. Learned Arbitral Tribunal is requested to permit the petitioner to further cross-examine CW1 only to the extent of the documents placed at page no.80-96 of the present petition. No other question apart from those relating to the aforesaid documents will be permitted to be asked or confronted to the witness.

12. In that view of the matter and in view of the statement of Mr. Agarwal, the petition is disposed of with the directions that the learned Arbitral Tribunal is requested to permit the petitioner to further cross-examine CW1 restricted to the aforesaid documents alone.

13. The petition is disposed of subject to the cost of Rs.20,000/- to be paid by the petitioner to the respondent on or before 26.04.2023.

14. Copy of this order be given *dasti* under the signature of the Court Master.

TUSHAR RAO GEDELA, J

APRIL 24, 2023/AT