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

% *Date of Decision: 10.04.2023*

+ **FAO (COMM) 85/2023 & CM APPL. 16893/2023 & CM
APPL. 16894/2023**

SHIV HARI SINGLA ... Appellant
Through: Mr. Jitender Chaudhary, Adv.

versus

UNION OF INDIA & ANR. Respondents
Through: Counsel (appearance not given)

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning a judgement dated 24.12.2022 passed by the learned Commercial Court in OMP(I)(COMM.) No. 124/2021 captioned *Shiv Hari Singla v. Union of India*.

2. By the impugned judgement, the learned Commercial Court had rejected the appellant's application under Section 9 of the A&C Act for setting aside a show-cause notice dated 22.02.2021.

3. The disputes between the parties arise in the context of a contract for "Provision of Air Conditioning and Allied Works including addition/alteration to main operation theatre complex at Base Hospital,

Delhi Cantt”. The respondents allege that the appellant’s execution in the said works was slow. It is the appellant’s case that in monetary terms, he had completed the entire contract; however, there were deviations and additional work for which the requisite permission was not forthcoming.

4. The respondents had issued a show-cause notice dated 22.02.2021, whereby they alleged slow progress of work and proposed withdrawal of the work. The appellant was called upon to speed up the progress of the work to avoid such a consequence.

5. The appellant filed an application under Section 9 of the A&C Act impugning the said show-cause notice but withdrew the said application on 22.03.2021. Thereafter, the appellant, once again, filed an application under Section 9 of the A&C Act [being OMP(I)(COMM) No.124/21], seeking certain interim measures of protection, including setting aside the show-cause notice dated 22.02.2021.

6. During the pendency of the said proceedings, on 21.08.2021, the respondents terminated the Contract. Aggrieved by the same, the appellant filed an application in OMP(I)(COMM) No.124/21 praying that *status quo ante* as on 21.08.2021 be directed to be maintained. In essence, the appellant sought a stay of the termination of the Contract.

7. The learned Commercial Court has rejected the said prayer on the ground that the Contract between the parties was terminable and therefore, not specifically enforceable under Section 14 of the Specific Relief Act, 1963.

8. We find no infirmity with the aforesaid view. The appellant’s contention that he is ready and willing to perform the Contract and

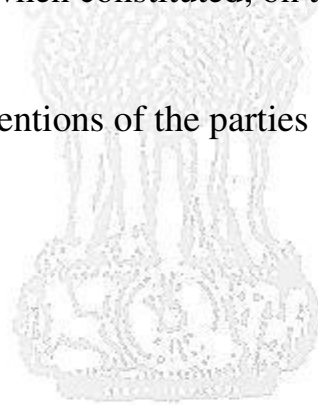
therefore, ought to be permitted to do so, is unsustainable. No interim relief can be granted in the nature of specific performance of the Contract, which is determinable.

9. It is also apparent that the relief sought by the appellant in its application under Section 9 of the A&C Act does not survive. As noted above, the appellant's main relief was regarding the show-cause notice dated 22.02.2021; however, subsequently, the Contract was terminated.

10. In view of the above, the present appeal is dismissed.

11. It is clarified that nothing stated in the impugned judgement or the order passed by this Court would influence the decision of the Arbitral Tribunal as and when constituted, on the merits of the disputes between the parties.

12. All rights and contentions of the parties are reserved.



VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 10, 2023
Ch