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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 422/2023

SANHINA AGNIHOTRI

.....Petitioner

Through: Mr. Deepak Vohra, Adv.

versus

PRAKASH CHANDRA GUWALANIRespondent

Through: Mr. Piyush Wadhwa, Adv. for
Mr. Bharat Sareen, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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23.09.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the disputes between the parties to arbitration.

2. The disputes arises in the context of a Lease Agreement dated 1 January 2019 executed between the petitioner and the respondent. The agreement provides for resolution of disputes by arbitration.

Clause 21 reads as under:

“21. Except as expressly stated herein, any and all claims, disputes, questions or controversies involving the parties and arising out of or in connection with any clause/terms incorporated in this Agreement, or the execution, interpretation, validity, performance, breach or termination hereof which cannot be amicably resolved by the Parties within 60 (Sixty) calendar days of arising of any dispute(s) by negotiation and conciliation, the said dispute/controversy shall be referred to the sole arbitrator in accordance with The Arbitration and Conciliation Act, 1996 as

¹ “the 1996 Act”, hereinafter



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then existing for resolving the claim/controversy/difference/dispute arising in/out of the instant Lease and for determination of the same by a Sole Arbitrator. The Arbitrator shall hear the parties and pass an award, which award shall be binding on the parties hereto.”

3. As disputes arose between the parties, the petitioner addressed a notice dated 12 January 2023 to the respondent under Section 21 of the 1996 Act for reference of the disputes to arbitration.

4. The respondent did not reply. The petitioner has, therefore, approached this Court under Section 11(6) of the 1996 Act.

5. No reply has been filed to this petition despite notice.

6. Today, learned Counsel appearing on behalf of the respondent submitted that disputes between the parties stand settled. He has made reference to a settlement agreement dated 9 June 2024 executed between the parties.

7. Mr. Deepak Vohra, learned Counsel for the petitioner submits, *per contra*, that the said settlement agreement does not settle all disputes between the parties and merely settled the aspect of possession, with the disputes regarding to arrears of rent still remaining unresolved.

8. It is also seen that order dated 13 September 2024, whereby a Coordinate Bench of this Court disposed of OMP (I) (Comm) 300/2022 on the basis of the aforesaid settlement agreement, has also done so without prejudice to the rights and contentions of the parties



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in the present arbitration petition.

9. There, thus appears to be a dispute between the parties on the issue of whether the settlement agreement dated 9 June 2024 actually settles the disputes between them.

10. The jurisdiction of this Court under Section 11(6) of the 1996 Act now stands restricted by the judgment of the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*². The Court can only examine whether there exists an arbitration agreement between the parties and whether the Section 11(6) petition has been filed within three years of Section 21 notice. Both these conditions stand satisfied in the present case.

11. *SBI General Insurance* forbears this Court from examining, further, whether the dispute does, or does not, survive after the settlement agreement dated 9 June 2024, especially as the Supreme Court has expressly clarified, in the said decision, that issues relating to the arbitrability of the disputes, or discharge of the liability by accord and satisfaction, cannot be examined by the Section 11 court.

12. In the circumstances, as the parties have not been able to arrive at a consensus regarding arbitration, this court appoints Mr. Moksh Arora, Advocate, (Tel: 9999061836) as the arbitrator to arbitrate on the disputes between the parties.

² 2024 SCC OnLine SC 1754



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13. The learned arbitrator shall be entitled to charge fees as per the Fourth schedule of the 1996 Act.

14. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act prior to entering on the reference.

15. All questions of fact and law, including the implication, if any, of the settlement agreement dated 9 June 2024 shall remain open to be agitated in the arbitral proceedings.

16. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 23, 2024/aky

Click here to check corrigendum, if any