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

Date of Decision : 19th January 2024

+ **ARB. A. (COMM.) 32/2023 and I.A. 13788/2023**

PRAVEEN KUMAR JAIN

..... Appellant

Through: **Mr. Rahul Malik, Mr. Praveen Kr.
and Mr. Afnan, Advocates.**

versus

RAJESH SHARMA AND ANR

..... Respondents

Through: **Mr. Sanjeev Sagar, Mr. K. Khan, Ms.
Shweta Arora, Mr. Sonu Kumar and
Mr. Sanjay Bobby, Advocates.**

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present appeal under section 37(2)(a) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the appellant impugns order dated 12.05.2023 passed by the learned Sole Arbitrator in Arbitration Case No. DIAC/3097/08-21 titled **Mr. Rajesh Sharma & Anr. vs. Mr. Praveen Kumar Jain** ('impugned order'), whereby the learned Sole Arbitrator has allowed an application under section 16 of the A&C Act filed by the respondents herein, which challenged the jurisdiction of the learned Sole Arbitrator to entertain the counter-claims filed by the appellant.



2. The principal reason for the learned Sole Arbitrator to hold that the counter-claims filed by the appellant were not maintainable, is that the arbitral tribunal is required to adjudicate only disputes arising from Construction Agreement dated 01.10.2019; and since the counter-claims sought to be filed arose from Construction Agreement dated 18.11.2019, the same were not maintainable in the pending arbitral proceedings. The relevant portion of the impugned order is as follows:

*“21. In view of the above judgments relied upon by the Ld. Counsel for the claimant, it is evident that **this tribunal is required to adjudicate the dispute with regard to the Construction Agreement dated 01.10.2019 and the Agreement dated 18.11.2019 allegedly executed between the parties can not be considered in these proceeding.***

*22. The Application filed on behalf of the Claimant is allowed and it is **held that counter claim of the respondent which is solely based on Agreement dated 18.10.2019 is not maintainable and can not be considered in these proceedings.**”*

(emphasis supplied)

3. Briefly, *vide* order dated 27.07.2021 made by this court in ARB. P. 423/2021 titled *Rajesh Sharma & Anr. vs. Praveen Kumar Jain*, the parties were referred to arbitration under the aegis of Delhi International Arbitration Centre (‘DIAC’) and the learned Sole Arbitrator was appointed to adjudicate upon their disputes *that are stated to have arisen out of Construction Agreement dated 1st October, 2019.*
4. The appellant’s contention is that the disputes between the parties in fact arise from Construction Agreement dated 18.11.2019; while the respondents challenge the authenticity of that agreement. The respondents in-turn rely on Construction Agreement dated



01.10.2019. Each party therefore denies the existence of the agreement relied upon by the opposing party, contending that the agreement relied upon by the opposing party is forged and fabricated.

5. Notice on this appeal was issued on 28.07.2023. No reply has been filed on behalf of either of the respondents.
6. The court has heard learned counsel for the parties at length.
7. The essential grievance of the appellant is that by way of the impugned order, the learned Sole Arbitrator has declined to even consider his counter-claims, holding that the counter-claims arise solely from Construction Agreement dated 18.11.2019; and are therefore not maintainable before the learned Sole Arbitrator in the on-going arbitral proceedings.
8. Learned counsel appearing for the appellant submits that though there is no cavil with the position that since the arbitration petition under section 11 of the A&C Act was premised on Construction Agreement dated 01.10.2019 relied upon by the present respondents (claimants in the arbitration petition), *vide* order dated 27.07.2021 made by this court in Arbitration Petition bearing ARB. P. 423/2021 the court appointed the learned Sole Arbitrator with the following observations:

“7. Accordingly, Mr. M. S. Sabharwal, (Retd.), District Judge [Contact No.: +91 9711119304] is appointed as the Sole Arbitrator to adjudicate the disputes that are stated to have arisen out of Construction Agreement dated 1st October, 2019.”

9. However, it is argued that in that reference order this court has also specifically observed as follows :

“11. It is clarified that the Court has not examined any of the claims of the parties and all rights and contentions on merits are left



open. Both the parties shall be free to raise their claims/counter-claims before the learned Arbitrator in accordance with law.”

(emphasis supplied)

10. Moreover it is urged, that a perusal of Construction Agreement dated 01.10.2019 relied upon by the respondents and Construction Agreement dated 18.11.2019 sought to be relied upon by the appellant would show that both these agreements relate to the same transaction, namely to the construction of a building on property bearing No. 255/2 and 246A/2, Hari Nagar Ashram, Mathura Road, New Delhi.
11. Learned counsel for the appellant submits that it is his case, that the respondents had signed multiple agreements relating to the same project to serve their own interests and ends; and, in any case, the respondents’ contention that Construction Agreement dated 18.11.2019 is a forged and fabricated agreement is a matter to be considered by the learned Arbitrator on merits in the course of the arbitral proceedings. Counsel submits however, that by allowing the respondents’ application under section 16 of the A&C Act and thereby rejecting the counter-claims sought to be raised by the appellant, the learned Arbitrator has summarily shot-down the case that the appellant wanted to canvass by way of his counter-claims.
12. To support his submission, learned counsel for the appellant has drawn attention to counter-claims dated 06.06.2022 filed before the learned Arbitrator, to explain that as detailed therein, the payment schedule mentioned in Construction Agreement dated 18.11.2019 is different from the payment schedule mentioned in Construction Agreement dated 01.10.2019, though the subject matter of both



agreements is the same.

13. Upon a conspectus of the matter, and after examining the two agreements in question, this court is of the view that the counter-claims sought to be made by the appellant based on Construction Agreement dated 18.11.2019 relate to the construction on property bearing No. 255/2 and 246A/2, Hari Nagar, Ashram, Mathura Road, New Delhi, which is also the property in relation to which claims have been made by the respondents arising from Construction Agreement dated 01.10.2019. It would appear therefore, that the counter-claims sought to be made by the appellant are well within the *scope of reference* made *vide* order dated 27.07.2021 in ARB. P. 423/2021 though the appellant has cited Construction Agreement dated 18.11.2019 in support of his counter-claims.
14. In the above view of the matter, this court is persuaded to allow the present petition, thereby setting-aside impugned order dated 12.05.2023; and directing the learned Arbitrator to consider and decide the counter-claims filed by the appellant, in accordance with law.
15. To allay the apprehension raised on behalf of the respondents, it is clarified that though the arbitration proceedings have emanated and the reference has been made in terms of Construction Agreement dated 01.10.2019, the other contract *viz.* Construction Agreement dated 18.11.2019 is to be *considered as a document* cited by the appellant in support of his counter-claims, without detracting from the position that the reference was made under Construction Agreement dated 01.10.2019.



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16. Needless to add that the appellant would be required to prove the existence of Construction Agreement dated 18.11.2019, in accordance with law.
17. The appeal is allowed and disposed-of accordingly.

ANUP JAIRAM BHAMBHANI, J

JANUARY 19, 2024
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(Released on : 14th February, 2024)

Signature Not Verified

Digitally Signed By: NEERAJ

Signing Date: 14.02.2024
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