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

+ **ARB.P. 918/2022**

HARBHAJAN SINGH Petitioner

Through: Ms. Rashmi B. Singh, Adv.

versus

TRILOCHAN SINGH & ANR. Respondent

Through: Mr. Prashant Batra, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.02.2024

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1. This is a petition under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator in terms of Family Settlement dated 03.08.2014.

2. Mr. Batra, learned counsel for the respondent opposes the petition and states that there were three agreements dated 08.06.2014, 03.08.2014 and 10.05.2015. He states that only the agreement dated 03.08.2014 contained an arbitration clause and the other two agreements do not have an arbitration clause.

3. He further states that the dispute does not concern the agreement dated 03.08.2014.

4. I have heard the learned counsels.

5. In the present case, the plaintiff filed a suit for recovery of Rs. 16.25 lakhs. On service of summons, the defendant filed a Section 8 application. The Section 8 application was allowed by the learned ADJ by the order dated 16.09.2019. The operative portion of the said order reads as under:-

“6. In the case on hand, admittedly, agreement/memo of settlement dated 08.06.2014, 03.08.2014 and 10.05.2015 had



been executed between the parties for the purpose of partition of the joint family properties owned by them. Alongwith the application, the defendants have placed on record the original agreements/memo of settlement dated 08.06.2014 & 03.08.2014 executed between the parties. A perusal thereof shows that plot at Bawana, from the sale proceeds of which 1/3rd share is being claimed by the plaintiff in the suit, was also the subject matter of the said settlements between the parties. Settlement dated 03.08.2014 contains the arbitration clause, which is reproduced as under:-

“Whereas there might be some dispute arising with regard to the terms and conditions of the said agreement. Therefore, both the parties have agreed to appoint the sole arbitrator.

NOW THIS DEED WITNESSETH As Under:

That the both parties have appoint to S. Jasbir Singh S/o S. Inder Singh R/o G-109-110, Hari Nagar, Gall No. 10, Jail Road, New Delhi & S. Paramjeet Singh S/o S. Inder Singh R/o A-182, Fateh Nagar, Tilak Nagar, New Delhi, as arbitrator who shall decide the said dispute and whose decision shall be binding on the parties."

Since the above agreement to refer their disputes arising out of the terms and conditions of the settlement is in writing and duly signed by the parties, it falls within the meaning of arbitration agreement as defined in Section 7 of the Act. Subject matter of the suit being the part and parcel of the



subject matter of the arbitration agreement, in view of the peremptory language of Section 8 of the Act, the court is bound to refer the dispute to arbitration in terms of the agreement between the parties.”

6. In this view of the matter, the respondent himself has stated that the dispute between the parties is covered by an arbitration clause, relies on the arbitration clause in the Agreement dated 03.08.2014, and the learned ADJ, based on the said arbitration clause, had disposed of the civil suit for recovery filed by the petitioner, the respondent cannot at this stage state that there is no arbitration agreement between the parties.

7. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

i) Ms. Neeru Vaid, (Advocate) (Mob. No.9582619834) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the



dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

8. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 12, 2024/NG

Click here to check corrigendum, if any