



2024:DHC:6813



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (T) (COMM.) 60/2024****MEENAKSHI AGRAWAL**PetitionerThrough: Mr. Lokesh Bhola, and Mr.
Abhishek Singh Chauhan, Adv.

versus

M/S ROTOTECHRespondentThrough: Ms. Divya Singh and Ms.
Larika Khandelwal, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)**

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03.09.2024

1. The petitioner and the respondent executed a Lease Deed, dated 1 August 2019, whereunder, the petitioner leased to the respondent, premises situated at D-14/5, Okhla Industrial Area, Phase-I, New Delhi-110020.

2. Certain disputes arose between the parties with respect to this Lease Deed. Clause 11 of the Lease Deed envisages resolution of the disputes by arbitration and reads as under:

“11. That the parties shall make a good effort to amicably settle any dispute, which may arise between them under this agreement. Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by Shri Atul Kumar, resident of 16, Sukhdev Vihar, New Delhi, a mutually agreed arbitrators in accordance with the provisions of the arbitration and conciliation Act, 1996 and the award made in pursuance thereof shall be binding on the parties.”

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3. The disputes having arisen between the parties, the petitioner addressed a notice to the respondent under Section 21 of the Arbitration and Conciliation Act, 1996¹, on 14 November 2022, for reference of the disputes to arbitration by Mr. Atul Kumar, the arbitrator named by both the parties in the lease deed. The respondent did not reply.

4. At this juncture, the petitioner makes a serious misstep. He ought to have approached this Court under Section 11(5) of the 1996 Act, seeking appointment of Atul Kumar as the arbitrator to adjudicate on the said disputes. Instead of doing so, the arbitrator Mr. Atul Kumar himself addressed a notice to the respondent. On the respondent failing to turn up for arbitration, the respondent was proceeded *ex-parte*.

5. As the mandate of Mr. Atul Kumar as the arbitrator was expiring, the petitioner filed OMP(Misc.)(Comm.) 285/2024 for extension of the mandate of the arbitrator.

6. Subsequently, the petitioner withdrew the said OMP and has filed the present petition seeking termination of the mandate of the arbitrator and appointment of a substitute arbitrator in his place.

7. The prayer appears to be misdirected. The appointment of Mr. Atul Kumar as an arbitrator named by both the parties is in the lease deed. There can be, therefore, no question of appointing any other arbitrator to arbitrate on the disputes between the parties.



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8. Where the petitioner defaulted was in not approaching this Court under Section 11(5) of the 1996 Act, when the respondent did not reply to the petitioner's Section 21 notice issued on 14 November 2022. The learned arbitrator also erred in unilaterally sending a notice to the respondent calling on them to attend the arbitration. The only avenue open to a litigant, who seeks resolution of disputes by arbitration, on the opposite party not responding to a Section 21 notice or on not acceding to the request for referring the dispute to arbitration, is to approach the Court under Section 11(5) or Section 11(6) as the case may be. He cannot proceed to unilaterally confer the arbitrator with jurisdiction, even if he is the named arbitrator. Nor can the arbitrator unilaterally called on the opposite party to appear in the arbitration proceedings.

9. As a result, Mr. Atul Kumar was *de jure* ineligible to proceed with the proceedings as an arbitrator. His mandate, therefore, is liable to be terminated under Section 14(1)(a) of the 1996 Act.

10. Insofar as the appointment of a substitute arbitrator is concerned, both parties are agreeable to Mr. Atul Kumar himself being appointed as a substitute arbitrator. However, the respondent submits that the arbitrator must be directed to start the proceedings afresh as the respondent never participated in the proceedings at the first instance.

11. Accordingly, Mr. Atul Kumar is again appointed as the

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arbitrator to arbitrate on the disputes between the parties.

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

13. The arbitral proceedings shall commence afresh. For this purpose, both sides shall present themselves before the learned arbitrator on 17 September 2024.

14. No unnecessary adjournment shall be granted by the learned arbitrator.

15. The mandate of the arbitrator shall be deemed to have commenced afresh with effect from today.

16. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 03, 2024/aky

Click here to check corrigendum, if any

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