



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15th December, 2023
Pronounced on: 04th January, 2024

+ **O.M.P. (T) (COMM.) 110/2023 & I.A. 24004/2023**

SEEMA GAUTAM

..... Petitioner

Through: Mr. Amit Gupta, Advocate.

versus

SHIV SHANKER & ANR.

..... Defendants

Through: Mr. Harvinder Singh, Advocate for R-1 & R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 24002/2023 (Exemption), I.A. 24003/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

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3. The petition under Section 14(2) of the Arbitration and Conciliation Act, 1996, (*hereinafter referred to as the "Act, 1996"*) has been filed for termination of the mandate of the Arbitrator.
4. Briefly stated, the petitioner, partner in M/s Nirgam Dialysis Partnership Firm along with respondent Nos. 1 and 2, had certain disputes in



respect of the investment, share and funds, invested by her in the Partnership Firm. The Arbitration Clause of Partnership Deed, reads as under:-

“Arbitration: All the difference and disputes related to partnership or its dissolution or arising out of this Deed shall be resolved by arbitration under Arbitration Act 1940 or any other law prevailing in its place at that time and the decision of the arbitrator shall be final and binding on all the partners.”

5. The disputes arose inter se the parties, who are the partners in M/s Nirgam Dialysis and Arbitration Clause was invoked. The Petitioner has asserted that the respondent No. 1 unilaterally appointed learned Arbitrator about which she was informed *vide* Letter dated 23.08.2022, addressed to the Arbitrator along with the Statement of Claim. Despite the objection of the petitioner duly conveyed to the Arbitrator *vide* a Letter dated 22.03.2023, the Arbitrator continued to proceed with the proceedings and even imposed cost on her. She was compelled to pay a total cost of Rs.25,000/-, before her Reply was taken on record. Subsequent applications addressed to the learned Arbitrator, were refused to be entertained by him. She requested the Arbitrator *vide* Letter dated 06.10.2023, to keep the matter in abeyance so as to enable her to approach the High Court. She also informed him on 09.10.2023, through an e-mail about the termination of his mandate as an Arbitrator.

6. She has thus, filed the present petition seeking substitution of the learned Arbitrator and for appointment of another independent sole Arbitrator under Section 14 of the Act, 1996.

7. **Learned counsel for the respondents** submitted that the respondents have no objection to the substitution of the learned Arbitrator, but the



amounts already paid to the learned Arbitrator may be adjusted towards the cost of Arbitration.

8. Submissions heard.

9. The petitioner has raised concerns about the conduct of the Arbitrator, who has been unilaterally appointed by the respondents. She has sought substitution of the learned Arbitrator.

10. Section 14 of the Act, 1996 provides that in case the Arbitrator becomes *de jure* incapable of continuing as an Arbitrator, he may be substituted under Section 14(2) of Arbitration and Conciliation of the Act, 1996. The parties have submitted their respective claims and reply before the learned Arbitrator.

11. Considering that the respondents have no objection to the substitution of the Arbitrator, Mr. Nishant Anand, Advocate (M) 9717061109, is hereby appointed as an independent Arbitrator to adjudicate the disputes between the parties, on the following terms:

- (i) The parties are at liberty to raise their respective objections before the Arbitrator.
- (ii) The fees of the learned Arbitrator would be fixed in accordance with the IV Schedule to Act, 1996 or as consented by the parties.
- (iii) This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.
- (iv) Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.



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12. It is made clear that the learned Arbitrator so appointed is at discretion to continue the proceedings, in terms of **Section 15 Clause (3) of the Act, 1996.**

13. The petition is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 04, 2024
RS

Signature Not Verified

Digitally Signed By: RAHIL
SHARMA

Signing Date: 05.01.2024
01:57:16

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