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

% ***Date of decision: 21st October, 2024***

+ **FAO 336/2024 & CM APPL. 61843-61845/2024**

DEEPAK NIJHAWAN

.....Appellant

Through: Mr. Vidit Gupta with Ms. Aditi
Sharma Wadhwa, Advocates.

versus

SHIVANI ARORA

.....Respondent

Through: Mr. Naveneet Tripathi with Ms. Jessica
Virdi, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. An unusual situation has arisen in the present matter.
2. Learned counsel for respondent also appears on advance notice.
3. When asked, learned counsel for the respondent stated that he had actually filed a petition under Section 9 of Arbitration & Conciliation Act, 1996 and due to some oversight, while filing the above said petition, a wrong provision of law was mentioned on the petition and it was described as if it was a petition under Order XXXIX Rule 1 and 2 read with Section 151 CPC.
4. It also seems obvious that such petition was, eventually, registered as a civil suit as the number allocated to such petition is C.S. DJ 818/24. Evidently, it was registered as a 'suit' because of the above said wrong nomenclature given by the respondent.
5. Surprisingly, the application under Order XXXIX Rule 1 and 2



read with Section 151 CPC had been filed in isolation. It was never accompanied with any suit.

6. According to learned counsel for respondent, when the above said petition was placed before learned District Judge – 04, they made a submission that it had been filed under Section 9 of Arbitration & Conciliation Act, 1996.

7. In such an eventuality, if the above said petition had been treated as an application or petition under Section 9 of Arbitration & Conciliation Act, 1996, it should have been returned to learned Principle District & Sessions Judge concerned for appropriate allocation to a Commercial Court, as such request could only have been entertained by a Commercial Court.

8. That being so, the concerned Court of learned District Judge – 04, should not have entertained the above said petition any further and should not have passed any *ex-parte* order as it lacked jurisdiction because of the fact that it was not competent to hear an application moved under Section 9 of Arbitration & Conciliation Act, 1996.

9. Learned counsel for the appellant states that since in the impugned order, it was mentioned that the plaintiff was directed to comply with provisions under Order XXXIX Rules 3 CPC, he, for all practical purposes, assumed it to be a case falling under the domain of civil jurisdiction and not arbitration and, therefore, he had to file the present appeal.

10. Be that as it may, it is very obvious that the above said order could not have been passed by the concerned Court, more so, when according to the specific case of the petitioner, she had merely filed a



petition under Section 9 of Arbitration & Conciliation Act, 1996.

11. Obviously, the confusion has cropped up because of the misdescription of the nature of petition.

12. In view of the above, the above said order dated 16.10.2024 is set aside and the respondent is directed to appear before the Court of learned Principle District & Sessions Judge, North District, Rohini on 23.10.2024 for allocation of the above said petition to a Commercial Court.

13. Needless to say, the respondent would also be at liberty to seek appropriate amendment in her petition in order to obviate any further complexity in the matter.

14. The appeal stands disposed of in the aforesaid terms.

15. Copy of the order be given dasti under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

OCTOBER 21, 2024
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