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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 278/2018, CM APPL. 49365/2018 (Stay)**
& CM APPL. 49366/2018 (Delay of 34 days in filing)

ANUP N. KOTHARI & ANRAppellants
Through: **Ms. Anusuya Salwan, Adv.**

versus

ROOPAK N. KOTHARI & ANRRespondents
Through: **Mr. Abishek Ghai, Adv.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
20.11.2024

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1. This appeal under Section 37 of the Arbitration & Conciliation Act, 1996 [**'Act'**] calls in question the order dated 30 August 2018 in terms of which the petition under Section 34 of the Act as preferred by the appellants has come to be disposed of.

2. The petition under Section 34 itself was in respect of the interim award dated 18 July 2018 passed by the Sole Arbitrator. The learned Single Judge has taken note of the principal findings which had come to be rendered by the Arbitral Tribunal [**"AT"**] and which formed part of the interim award. Paragraphs 36 to 38 of the interim award are reproduced hereinbelow:-

"36. The explicit term in the partnership is that the partnership is AT WILL. It is further qualified that it is liable to terminate by mutual agreement at any time. In other words, the partnership deed expressly makes a provision for the determination of the partnership. No doubt, there is no provision in the partnership deed for the duration of the partnership deed but there is an express provision for the determination of the partnership and applying the



ratio of the decision of Supreme, Court *in Karumuthu Thiagarajan Chettiar's case (supra)*, the partnership is not a partnership at Will, as defined under Section 7 of the Partnership Act.

37. In view of the aforementioned conclusion, there is no manner of doubt that on the Claimants having been served notice, the same has to be treated as a notice of retirement from the partnership and not a notice for dissolution and consequently in view of the retirement the remaining partners, namely, Respondents could continue the partnership business.

38. In view of the above, first point is held in negative that the partnership in terms of the partnership deed dated 01.04.2003 has not been dissolved by notice dated 18.10.2012. As the first point has been held in negative, it is held that irrespective of the notice date 18.10.2012, the Respondents as surviving partners could continue the partnership business. Ordered accordingly.”

3. After taking note of the challenge which stood raised, the learned Single Judge has taken on board the statement stated to have been made on behalf of the respondents, with learned counsel conceding to the fact that the two issues which were canvassed in the petition under Section 34 having not been “*discussed*” in the impugned award rendered by the AT.

4. The petition under Section 34 thereafter came to be disposed of with the learned Single Judge choosing to frame the following operative directions:-

“In my opinion, both the above issues do not form part of the Impugned Award. The issue whether the respondents agreed to the request of the petitioners or whether from the correspondence exchanged between the parties, it can be inferred that the petitioners agreed to retire from the partnership firm are issues to be considered by the Arbitrator upon examination of the evidence.

The present petition is disposed of making the above observations, with no order as to costs.”

5. As it manifest from the above, there has been an abject failure to either engage with the validity of the award or to even frame an operative or dispositive direction which may have indicated whether the interim award survived or not.



6. In view of the aforesaid, we allow the present appeal and set aside the order dated 30 August 2018.

7. The petition under Section 34 shall consequently stand revived on the board of the learned Single Judge to be considered afresh. All rights and contentions of the respective parties on merits are kept open.

8. Parties shall appear before learned Single Judge on 02.12.2024.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 20, 2024

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