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

+ O.M.P. (T) (COMM.) 70/2024

GAURAV DHANUKA AND ANRPetitioner

Through: Ms. Renuka Arora, Mr. Amit Jain,
Mr. Arun Dalal, Yatin Arora, Advs.

versus

SURYA MAINTENANCE AGENCY PVT LTD AND OTHERS

.....Respondent

Through: Mr. Badal Dayal, Mr. Surender
Wankhede, Advs. for R-1
Mr. Shafiq Khan Adv. for R-3

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CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
11.08.2025

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1. These are petitions filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the learned Sole Arbitrator and thereafter, appoint a Sole Arbitrator to adjudicate the disputes between the parties.
2. The petitioners jointly acquired the subject property i.e. (Unit 1002), along with Unit No. 1003, Plot No. B-2, 3, 4, NDM-1, Netaji Subhash Place, Delhi- 110034 (adjacent property), *vide* Registered Sale Deed dated 14.10.2015. Subsequently, the petitioner executed a tripartite Maintenance Agreement *qua* the subject property, dated 01.11.2015, with the respondent No. 1 and respondent No. 2. Respondent No. 3 is the builder.
3. Since the respondents were charging maintenance charges, the petitioner invoked arbitration clause being Clause No. 20 of the said Agreement which reads as under:-

“ARTICLE 20

ARBITRATION

20.1 All disputes, difference or disagreement arising out of in connection with or in relation to this Agreement shall be mutually discussed and settled between the Parties:

20.2 All disputes, difference or disagreement arising out of in connection with or in relation to this Agreement, which cannot be amicably settled, shall be finally decided by



arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Any arbitration pursuant hereunder shall be a domestic arbitration under the applicable law.

20.3 The venue of arbitration shall be Delhi and the language of arbitration shall be English.

20.4 That all the disputes differences between the parties or in respect of any matter with regard to rights, dues and liabilities of any of the parties, shall be settled by reference to Arbitration to a sole Arbitrator to be appointed by the Company as per provision of Arbitration and Conciliation Act, 1996, together with any statutory proceeding shall be held and conducted at Delhi.”

4. Thereafter, this Hon’ble Court vide Order dated 17.04.2023 referred the disputes between the parties herein to the learned Sole Arbitrator. Consequently, the learned Sole Arbitrator entered reference and proceeded with the arbitration proceedings.
5. Vide Order dated 26.10.2023, the learned Sole Arbitrator recorded that the fees of the arbitration is fixed at Rs. 1 lakh per hearing where 50% was to be borne by the petitioner and 50% by respondent No. 1. After deposit, the respondent No. 1 was granted liberty to seek apportionment from other contested respondents.
6. As the petitioners are individuals and are unable to pay the fees to the learned Sole Arbitrator, the petitioners moved an application seeking recall of the order dated 26.10.2023 which was dismissed by the learned Sole Arbitrator.



7. Since none of the parties deposited their arbitral fees, the learned Sole Arbitrator on 28.02.2024, terminated the arbitration proceedings.
8. Mr. Khan, learned counsel for the respondent, states that the present petition is not maintainable in view of Sections 15(2), 23(4), 25 and 29 of the Arbitration and Conciliation Act, 1996. In this regard, reliance is placed on ***Raj Chawla & Co. Stock & Share Brokers v. Nine Media & Information Services Ltd., 2023 SCC OnLine Del 520*** and more particularly, para nos. 5, 6, 7, 10, 11, 12, 13 and 14. The said paras are reproduced hereunder:-

“5. It must and at the outset be stated that the petitioner appears to have approached this Court directly without complying with the mandate of Section 15(2) of the Act. It would be pertinent to note that where an arbitrator withdraws from office and its mandate stands terminated, a substitute arbitrator is to be appointed in accordance with the rules applicable to appointment. The word “rules” as occurring in Section 15(2) has been duly explained by the Supreme Court to mean the arbitration agreement and the procedure for appointment as stipulated therein.....

6. The petition which has evidently come to be instituted without following the procedure for appointment as enshrined in the MoU is liable to be rejected on this ground alone. However since learned counsels for parties additionally addressed submissions turning upon the ambit of Section 29 A, the Court deems it apposite to notice the legal position which appears to emerge upon a



consideration of the relevant provisions of the Act.”

9. I am of the view that the reliance placed on the aforesaid judgment is misconceived as it was observed therein that the appointment of the substitute Arbitrator has to be done according to the original Agreement or provision applicable to the appointment of the Arbitrator. In the present case, as there is no specific provision about appointment of a substitute arbitrator in the Agreement, the provisions of Arbitration and Conciliation Act, 1996 needs to be followed, as is evident from Clause 20 of the Agreement.
10. This Court appointed the Sole Arbitrator *vide* order dated 17.04.2023 and hence, it is within the domain of this Court to substitute the Sole Arbitrator on account of reasons as mentioned herein above.
11. It is requested that in a similar matter, Mr. Siddharth Yadav has been appointed and the present disputes may referred be referred to him for adjudication.
12. For the said reasons, the petition is allowed and as the mandate of the learned Sole Arbitrator already stood terminated, the following directions are issued:-
 - i) Mr. Siddharth S. Yadav, Adv. (Mob. No. 7838888886) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
 - iii) The remuneration of the learned Sole Arbitrator shall be in



- terms of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) 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/counter-claims and merits of the dispute of either of the parties including whether respondent No. 3 is a party to the disputes or not, are left open for adjudication by the learned Sole Arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
- 13.** The present petitions are disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 11, 2025/sp