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**In the court of Sh. Ashwani Kumar Sarpal, District Judge-
Commercial Court-05, Central District
Tis Hazari, Delhi**

Sh. Rohit Dewan

vs.

Sh. S.C. Rajan & another
[OMP (I) (Comm) -01/2020]

**(Application for termination of mandate under Section 14
read with Section 12 and Seventh Schedule of
Arbitration & Conciliation Act)**

10-7-2020

ORDER:-

Respondent no. 2 is a big private educational institute whereas petitioner was at one time working under it being its contractual employee. Due to dispute between the petitioner and respondent no. 2, the matter was unilaterally referred to respondent no. 1, Id. Arbitrator by respondent no. 2 as per terms and conditions of employment agreement.



Petitioner alleged that respondent no. 1 (herein after is referred as an Arbitrator) is ineligible to act as an Arbitrator due to his relations with respondent no. 2, so his mandate should be terminated. Ld. Arbitrator entered into an arbitration reference bearing no. 128 of 2018 and gave a declaration under Section 12 of the Act at first instance on 29-6-2018. However, on the application dated 19-7-2018 moved by the petitioner in this arbitration proceedings, ld. Arbitrator disclosed in his order dated 24-11-2018 that he has 38 cases pending before him in which he was appointed as an arbitrator by respondent no. 2. In some another arbitration proceeding bearing no. 117 of 2018, ld. Arbitrator disclosed vide his order dated 15-12-2018 that he was appointed as an arbitrator in 60 cases by respondent no. 2. In his order dated 24-11-2018, ld. Arbitrator held that he can proceed with the matter as disclosure made vide his order dated 29-6-2018 was sufficient. Thereafter, petitioner moved an application under Section 13 (2) of the Act before ld. Arbitrator for his recusal from the proceedings which is still pending. As per petitioner, justifiable doubts regarding the independence and impartiality have arisen in his mind that is why this application was moved. According to the petitioner, ld. Arbitrator was de jure unable to perform his functions due to his relationship with respondent no. 2 falling under Seventh Schedule read with Section 12 (5) of the Act, so his mandate should be terminated. Petitioner also stated that ld. Arbitrator was required to disclose in his initial disclosure dated 29-6-



2018 about his appointment in huge number of arbitration proceedings made by the respondent no. 2 which was a mandatory condition. Petitioner alleged that Id. Arbitrator deliberately suppressed this material fact and gave a vague disclosure and did not fulfill the mandatory disclosure as required by Sixth Schedule. It is stated that justice not only should be done but also seem to have been done and there is every apprehension of violation of natural justice, fair hearing and unbiased role of Id. Arbitrator. It is also stated by petitioner that this was the matter between him and the Id. Arbitrator as he simple asked the Id. Arbitrator to disclose certain facts but he allowed the respondent no. 2 to contest the application of the petitioner which is not correct as respondent no. 2 tried to justify the multiple appointment of the Id. Arbitrator. It is also stated that Id. Arbitrator erroneously proceeded to treat his application dated 19-7-2018 as being a challenge under Section 13 of the Act whereas only certain informations was asked from him. Petitioner referred various provisions of Arbitration & Conciliation Act and case laws in his petition.

My Id. Predecessor on the first hearing itself stayed the proceedings before Id. Arbitrator and issued notice to both the respondents. Id. Arbitrator opted not to contest the case despite service whereas respondent no. 2 filed the reply and contested this petition by raising number of grounds including question of its maintainability.



The final arguments on this case took place on 7-3-2020 and arguments were heard on that day on behalf of the petitioner. The matter was adjourned for orders on 24-3-2020 as newly engaged counsel for the respondent no. 2 was not ready for arguments on that day. Thereafter due to Covid-19 pandemic, lockdown started and courts were closed which are still closed till 15-7-2020. The cases were adjourned enblock as per directions of Hon'ble High Court but now instructions have been received to pass orders/judgment in cases where it is possible. The counsel for the respondent no. 2 had submitted written submissions on the official email of this court.

The dispute arose between the parties in respect of factual merits of the case, legality and validity of arbitration clause etc. are not to be considered by this court as it is to be looked into in arbitration proceedings by the Arbitrator. First of all, issue regarding maintainability of the petition has arisen as respondent no. 2 has raised this point in reply of this petition. Before proceeding further, this issue is required to be discussed.

Ld. Arbitrator entered into reference and gave mandatory declaration under Section 12 of the Act on 29-6-2018. Petitioner wanted some more information from the Id. Arbitrator about number of arbitration matters which he had received from respondent no. 2, so he moved an application in this regard on 19-7-2018 without leveling any type of allegations against Id. Arbitrator regarding his bias etc. This application



was disposed off on 24-11-2018 and Id. Arbitrator informed that he has 38 cases referred by respondent no. 2 though respondent no. 2 in his reply to the application dated 19-7-2018 mentioned this figure at 28. No doubt, Id. Arbitrator in some another matter bearing no. 117/2018 mentioned receipt of 60 cases from respondent no. 2 vide his order dated 15-12-2018 but it is not clear on record how and due to what reasons this discrepancy has arisen. It may be possible that respondent no. 2 referred 22 cases to the Id. Arbitrator in between dates of 24-11-2018 to 15-12-2018 or there was any typographical mistake in the reply of the respondent no. 2 etc.

Petitioner moved an application on 19-7-2018 for seeking more information by treating initial declaration of Id. Arbitrator as incomplete and vague. However, he had come to know about all remaining information vide order dated 24-11-2018 of Id. Arbitrator. According to petitioner, he moved an application under Section 13 (2) of the Act before Id. Arbitrator and challenged his appointment which is still pending. Para no. 14 of the petition mentioned about moving of this application. This application was apparently sent by post which was allegedly received by Id. Arbitrator on 6-12-2018. Though, no copy of this application is placed on record by the petitioner to find out what exact allegations are leveled in the same and whether the grounds taken in that application have been taken in the present petition or not but the request of recusal of Id. Arbitrator by leveling certain allegations against him must be



there. In my view the present petition moved is premature. He should have waited for decision on this application to be given by Id. Arbitrator before approaching this court as chances of his self recusal may be there.

Petitioner in para no. 12 of the petition also stated that Id. Arbitrator in his order dated 24-11-2018 erroneously proceeded to treat the application dated 19-7-2018 as being a challenge under Section 13 of the Act. If it is so, then what was the necessity of the petitioner to subsequently move an application under Section 13 (2) of the Act before Id. Arbitrator. Petitioner in this regard is taking contradictory stand. Either he should have accepted the fact that order dated 24-11-2018 infact is a deemed order under Section 13 of the Act or Id. Arbitrator is still require to pass an order in respect of this issue on his application under Section 13 (2) of the Act. Otherwise also, I have gone through the last paragraph of the order dated 24-11-2018 passed by Id. Arbitrator and found that he infact is repeating the averments of initial declaration in brief and this paragraph cannot be treated as giving deemed findings of Section 13 of the Act as alleged by the petitioner.

In view of the above discussion, I am of the view that the present petition is premature and petitioner should have waited for the decision of his application under Section 13 (2) of the Act to be given by Id. Arbitrator before coming to this Court. Id. Arbitrator while disposing this application can finally decide whether the limitation of 15 days in moving this application has



to be taken from the initial declaration dated 29-6-2018 or from the order dated 24-11-2018. There is no need to discuss other points raised by the parties in such situation. Accordingly, present petition is dismissed. Interim stay dated 31-1-2019 is hereby vacated and ld. Arbitrator can proceed with the matter but has to decide this application under Section 13 (2) of the Act first. Ld. Arbitrator is requested to decide this application within a reasonable time and expeditiously as soon as possible. Copy of order be sent to ld. Arbitrator for information and file be consigned to record room.



(Ashwani Kumar Sarpal)

Dt. 10-7-2020

District Judge-Commercial-5

Central District, Delhi


OMP (I) (Comm) -01/2020

Sh. Rohit Dewan vs. Sh. S.C. Rajan

10-7-2020

Present:- None

Vide separate order, petition is dismissed, reader is directed to upload this order on the court website and file be consigned to record room after sending copy of the order to Id. Arbitrator.



(Ashwani Kumar Sarpal)
District Judge-Commercial-5
Central District, Delhi