

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1794 OF 2009
(Arising out of SLP(C) NO. 10902 of 2008)

M/s Kailash Store

..... Appellant

Versus

Union of India

.....Respondent

ORDER

Leave granted.

- 2) The appellant calls in question the correctness or otherwise of the judgment and order passed by the High Court of Delhi in Arbitration Case No. AA No. 339 of 2007 dated 28th day of February, 2008. By the impugned judgment, the court while allowing the petition, has directed Divisional Commercial Manager of Railways to appoint a person as Arbitrator within thirty days from the date of order and has further directed that the Arbitrator so appointed shall visit the site in presence of both the parties and shall physically verify if there was occupation of any part of the parking site by old and unclaimed vehicles, at the time of auction of the parking site. The court has

further observed, that, no other dispute is referred to the Arbitrator except the dispute regarding 20% less area allegedly handed over to the appellant/applicant.

- 3) The appellant asserts that, the court has erred in adjudicating the dispute raised by the applicant/appellant, while allowing the petition under Section 11(6) of Arbitration and Conciliation Act, 1996, here in after for the sake of brevity and clarity referred to as 'Act 1996', without referring all the points of disputes to the Arbitrator for adjudication. It is further submitted, that, the court while exercising its powers under Section 11(6) of the Act, ought not to have directed the respondent to appoint a fresh Arbitrator, when the respondent had failed and neglected to appoint an Arbitrator, despite the fact that the appellant had invoked the arbitration clause in the agreement and instead should have appointed a qualified Arbitrator to adjudicate the dispute between the parties. Lastly, it is stated that, the court ought not to have restricted the point of dispute to a particular issue instead of leaving open to the applicant to get all the dispute raised by him in the petition to be adjudicated before the Arbitrator. However, at the time of hearing of the appeal, the learned counsel for the appellant submits, that instead of deciding all the legal issues raised in the

appeal, this court may appoint one Shri D.R. Bhatia, former Joint Registrar of Delhi High Court as the sole Arbitrator and direct the Arbitrator to resolve all the disputes between the parties as envisaged under the agreement.

- 4) The learned counsel for the respondent has no objection to the suggestion made by the learned counsel for the appellant.
- 5) In view of the above, without going into the legal issues raised by the appellant, as agreed between the parties, we appoint Shri D.R. Bhatia as the sole Arbitrator to decide all the disputes raised by the appellant in the petition filed under Section 11 of the Act as expeditiously as possible and, at any rate, within a outer limit of six months from the date of receipt of copy of this court's order after issuing notice to both the parties. The Arbitrator's fee is fixed at Rs. 50,000/- (Rupees Fifty Thousand only) as agreed by the appellant.
- 6) The appeal is disposed of accordingly.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
March 23, 2009.**