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

\+ CM(M) 1156/2022

RANJANA MITRA PROPRIETOR OF MS V2 ASSOCIATES
..... Petitioner

Through: Mr. Deepak Prakash, Ms. Divyangna Malik, Mr. Nachiketa Vajpayee & Mr. Vardaan Kapoor, Advocates.

versus

MOHIT NARANG PROPRIETOR OF M/S MEDISPA DERMAL SCIENCES ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

% 01.11.2022

1. This petition has been filed under Article 227 of the Constitution of India, challenging order dated 11th October 2022 passed by a learned sole Arbitrator in Case Reference DIAC/2945/03-21 (***Mohit Narang v. Ranjana Mitra***), pending between the respondent as the claimant and the petitioner as the respondent.

2. Mr. Deepak Prakash, learned counsel for the petitioner, restricts the scope of the challenge in the present petition to the costs imposed by the learned Arbitrator. He submits that the learned Arbitrator was not justified in imposing costs of ₹ 85,000/-, as the maximum costs which are envisaged by clause 21.6(2) under the Delhi International Arbitration Centre (DIAC) Rules is only ₹ 35,000/-. It is also submitted Mr Prakash that the costs have been imposed merely because the petitioner sought an adjournment. He submits that the petitioner is a single lady staying at Barelly and, owing to inclement

weather conditions, was not in a position to attend the hearing before learned Arbitrator on 11th October 2022. He expresses contrition on behalf of his client for her absence and undertakes to ensure that she shall remain present for future hearings.

3. The learned Arbitrator has observed in the impugned order that the petitioner had taken adjournments on earlier occasions as well.

4. In ***State Bank of India v. Chandra Govindji***[1], the Supreme Court addressed the issue of whether, in examining whether the denial of adjournment on a particular date was justified, the Court was entitled to examine the number of adjournments earlier taken. In that case, the respondent Chandra Govindji filed a civil suit for evicting the appellant-Bank from the premises owned by him, along with an application for enhancement of rent. The Bank resisted the claim. On 29th October 1992, the Bank sought adjournment on the ground of non-availability of its Counsel. Adjournment was granted subject to costs. On the next date, i.e. 11th November 1992, the Rent Controller (RC) did not hold Court. Certain documents were produced on the next date of hearing, i.e. 13th November 1992, and the matter was adjourned for further hearing to 24th November 1992. On 24th November 1992, the Bank again sought adjournment on the ground of non-availability of its Counsel. The request was rejected and the matter was set down for orders on 30th November 1992. The Bank filed an application for a reconsideration of the decision, submitting that its Counsel had to leave town for medical treatment. Without passing orders on the application, the RC, *vide* order dated 21st January 1993, allowed the application of Chandra Govindji for

[1] **(2000) 8 SCC 532**

enhancement of rent. The order was successively upheld by the District Judge and the High Court. The Bank appealed to the Supreme Court.

5. Chandra Govindji contended, before the Supreme Court, that, as repeated opportunities had been granted to the Bank, the decision of the High Court did not merit interference. The Supreme Court rejected the contention, holding, in the process, thus:

> "**7.** In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter."

6. The ground urged by Mr Deepak Prakash to explain the absence of his client from the arbitration on 11th October 2022, *prima facie*, merits acceptance.

7. Mr. Deepak Prakash submits that his client is willing to pay an amount of ₹ 35,000/- as costs instead of ₹ 85,000/- imposed by the impugned order.

8. Ordinarily, interlocutory orders passed by the arbitral tribunals are outside the pale of jurisdiction of Article 227 of the Constitution of India, in view of the law laid down in ***S.B.P. & Co. v. Patel Engineering Ltd***[2]. Where the ground urged in the challenge to the

[2] **(2005) 8 SCC 618**

interlocutory order would be available as a ground to challenge the final award which may come to be passed in the arbitral proceedings, the Supreme Court holds that the party is required to bide its time and await the passing of the final award.

9. In the present case, however, there is no other alternative relief available to the petitioner against the costs imposed by the learned Arbitrator. It would be unrealistic to hold that the petitioner could raise its challenge to the costs imposed as a ground to assail the final award passed in the arbitral proceedings.

10. In that view of the matter, without going into the justification for imposition of costs by the learned arbitrator, I deem it appropriate to partly allow this petition by accepting the offer of Mr. Deepak Prakash and reducing the costs paid by petitioner to ₹ 35,000/- which would be paid to the respondent by way of a crossed cheque/demand draft on the next date of hearing before the learned Arbitrator.

11. This petition stands disposed of in above terms.

C. HARI SHANKAR, J.

NOVEMBER 1, 2022/*ns*