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**HIGH COURT OF DELHI AT NEW DELHI**

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FAO (OS) 198/2008

M/s Tantia Constructions Ltd.

(formerly known as Tantia

Construction Co.Ltd.)

.... Appellant

Through Mr.S.K. Jain, Advocate

versus

Delhi Development Authority & Anr. .... Respondents

Through Mr.S.M. Chopra, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE DR. JUSTICE S.MURALIDHAR**

1. Whether reporters of the local papers be allowed to see the judgment ? N
2. To be referred to the Reporter or not ? N
3. Whether the judgment should be reported in the Digest ? N

**ORDER**

**11-8-2008**

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1. This appeal is preferred against the dismissal of the petition of the appellant for enlargement of time for making the award. It is an admitted position that the disputes between the appellant and the respondents were referred for arbitration vide order of this Court passed on 19<sup>th</sup> February, 1996 and this Court directed Engineer Members of DDA to appoint an Arbitrator. The Engineer Members DDA appointed Shri Suresh Mehta as the Arbitrator. Shri Suresh Mehta entered into the reference vide letter dated 12<sup>th</sup> April, 1996. After Shri Suresh Mehta, Shri R.B.

Malhotra took over the charge and continued the proceedings vide letter dated 10<sup>th</sup> September, 1997 and directed the parties to appear before him on 22<sup>nd</sup> October, 1997. After Shri R.B. Malhotra, Shri N.K. Sharma took over the charge and continued with the arbitration proceedings. On 7<sup>th</sup> September, 1998, the Arbitrator Shri N.K. Sharma passed the following order:

“..... A request for enlargement of time was received from the claimants vide No.TCCL/D/SE/ARBN/96-97/130, dated 9.9.96 i.e. after approximately five months of entering into the reference by the arbitrator.

In terms of clause 28(2) of the Arbitration Act, 1940, the Arbitrator had become functus officio much before the request for enlargement of time for making and publishing the award was made by the claimant.

Notwithstanding the fact that the arbitration proceedings had been continued by the Arbitrator, the same have got vitiated in view of the above. The case is, therefore, adjourned SINE DIE.”

2. However, the appellant did not make any application even after this order of September, 1998 and has moved the petition before the learned single Judge after lapse of more than nine years of the order. We do not find any error in the order of the learned single Judge in rejecting this application as hopelessly barred by delay and laches.

3. As noted earlier the proceedings were adjourned sine die vide order dated 7<sup>th</sup> September, 1998 after recording that the Arbitrator has become functus officio due to want of enlargement of time. Suddenly, out of blue, after about eight years, on 4<sup>th</sup> July, 2006, Shri S.S. Jain restarted the arbitral proceedings without there being any authority conferred upon him as an Arbitrator in the matter or without there being any reference made to him. The respondents vide letter dated 5<sup>th</sup> May, 2007 informed the Arbitrator that the Arbitrator had become functus officio since there was no extension of time by the Court. The Arbitrator during the hearing dated 24<sup>th</sup> May, 2007 directed the appellant to get the enlargement of time from the Court and this is how the petition came before the learned single Judge.

4. In our opinion, the proceedings before Shri S.S.Jain were clearly without jurisdiction inasmuch as the Arbitrator had already become functus officio for want of enlargement of time.

5. The appeal is dismissed.

Chief Justice

August 11,2008  
"nm"

S. Muralidhar, J