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S.K. Gupta Vs. Delhi Development Authority and ors.

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SooperKanoon Citation : sooperkanoon.com/690411

Court : Delhi

Decided On : Jan-31-2000

Reported in : 2000IIIAD(Delhi)306; 84(2000)DLT324; 2000(52)DRJ831

Judge : Manmohan Sarin, J.

Acts : Arbitration and Conciliation Act, 1996 - Sections 11(6)

Appeal No. : AA. No. 361/98

Appellant : S.K. Gupta

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Mr. V.K. Sharma, Adv.

Advocate for Pet/Ap. : Mr. Sandeep Sharma, Adv

Judgement :
ORDER

Manmohan Sarin, J.

1. With the counsel of the parties, the petition is taken up for disposal.

Respondents have filed affidavit of their Chief Engineer dated 18.11.1999, explaining in detail the reasons for the delay in appointment of the arbitrator in compliance with the order of this Court.

Learned counsel for the petitioner has urged before me that in view of the neglect and failure of the respondents to appoint an arbitrator within the time directed by the Court, the court should appoint an independent arbitrator having regard to the provisions of Section 11(6) of the Arbitration and Conciliation Act 1996.

2. While it is true that under Section 11(6) of the Arbitration and Conciliation Act, 1996, the affected party may approach the court for taking necessary steps for appointment of an independent arbitrator on the failure of the designated authority to appoint one. Yet the Court has the discretion not to so appoint, in case the arbitrator is appointed by the designated Authority in the meanwhile and the delay is satisfactorily explained.

3. In the present case, the respondents was directed to appoint an arbitrator on 6.5.1998 within 4 weeks. The respondent failed to appoint the arbitrator within the stipulated period and appointed an arbitrator only on 6.10.1998. Arbitration agreement between the parties provides for appoint-ment of an arbitrator by the Engineer Member under Clause 25. I have perused the affidavit filed by the Chief Engineer, South East Zone of the respondent/DDA, explaining the delay in appointing the arbitrator. Learned counsel for the petitioner urges that the respondents should not be permitted to take advantage of their own lapses or delays in movement of files. It has been averred in the affidavit that the file got mixed up with other files during the period May to July, 1998 and was not traceable.

4. I am satisfied on going through the affidavit that the delay in appointment was on account of the reasons set out in the affidavit and was neither deliberate nor due to any callous neglect or out of any intention of not complying with the orders given by this court. In these circumstances, especially keeping in mind the content of the affidavit given, I am satisfied that the delayed appointment is sufficiently explained. Accordingly, in view of the arbitrator having already been appointed, the petitioner would not be entitled to the relief sought by this petition.

Petition is disposed of as infructuous.

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