

Sandeep Mavaskar Vs. Col. Inder Saln Bhatia and anr.

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SooperKanoon Citation : sooperkanoon.com/848586

Court : Delhi

Decided On : Mar-23-2010

Judge : Valmiki J. Mehta, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11 and 34

Appeal No. : O.M.P. No. 436/2003

Appellant : Sandeep Mavaskar

Respondent : Col. Inder Saln Bhatia and anr.

Advocate for Pet/Ap. : Anurag Kumar Aggarwal and; Vishvnidhi, Advs.

Judgement :

Valmiki J. Mehta, J.

1. By this petition under Section 34 of the [Arbitration and Conciliation Act, 1996](#), the petitioner challenges the Award of the Sole Arbitrator dated 15th July, 2003. The challenge to the Award is not on merits but on the ground that the Arbitrator had no jurisdiction to entertain the disputes because Arbitrator was not an Arbitrator appointed in accordance with law.

2. The parties to the present petition entered into a Partnership Deed on 22nd February, 2003 for carrying on the business of event management under the name and style of M/s. INS Management. The Partnership Deed contained an Arbitration

Clause which reads as under:

10. That in case of any dispute among the parties in connection with the partnership the same shall be decided in accordance with the provisions of Indian Arbitration Act.

3. From the aforesaid Arbitration Clause it is clear that there is no named Arbitrator. The record also shows that an Arbitrator was not appointed by a Court under Section 11 of the [Arbitration and Conciliation Act, 1996](#). The Arbitrator assumed jurisdiction to decide the disputes by virtue of the following resolution:

INS Management

(Exhibitions, Promotions & Event Management)

It is hereby resolved and declared that we the under mentioned partners of M/s. INS Management, 135, Ansal Chamber - II, 6, Bhikaji Cama Place, New Delhi - 110066, appoint Sh. Keshav Kaushik, Advocate, Supreme Court, office at 150, Ansal Chamber - II, 6, Bhikaji Cama Place, New Delhi - 110066 as the Sole Arbitrator to, look into the issues regarding ascertainment of assets and liabilities of the Firm above mentioned and if the need arises liabilities of the each partner in the event of the Firm is dissolved.

Sd/- Sd/-I.S. Bhatia (Partner) Nasim Bano(Partner)A copy of this resolution is sent to all the partners of the Firm.

Copy of the same is also sent to Sh. Keshav Kaushiv, Advocate, Sole Arbitrator.

4. A reference to the aforesaid resolution/Agreement shows that the same has only been signed by two partners namely Sh. I.S. Bhatia and Ms. Nasim Bano. Admittedly, this Agreement to refer the disputes to the Arbitrator, who has passed the impugned Award, is not signed by the present petitioner-Mr. Sandeep Mavaskar. The counsel for the petitioner has drawn my attention to a letter dated 14th June, 2003 addressed by the petitioner to the sole Arbitrator Mr. Keshav Kaushik, Advocate, in which the position as aforesaid that the Arbitrator has not been appointed by the consent of the petitioner was brought to his notice.

5. By the impugned order and Award dated 15th July, 2003 the assets and liabilities of the partnership firm have been divided. The Arbitrator, however, does not make any reference or decide the objection of the present petitioner, sent to the Arbitrator in the form of the letter dated 14th June, 2003 as regards his lack of jurisdiction. The petitioner has also filed proof of dispatch of the letter dated 14th June, 2003.

6. As per Section 11 of the Arbitration & Conciliation Act, 1996 unless an Arbitrator is a named Arbitrator, the Arbitrator can only be appointed by the consent of the parties or failing which on a petition being filed in the Court. The Arbitrator has neither been appointed by the consent of the petitioner whose signatures are conspicuous by absence in the resolution dated 5th June, 2003 and also the Arbitrator has not been appointed in a petition under Section 11. Therefore, in my opinion the Arbitrator had no jurisdiction whatsoever to decide and determine the disputes which arose between the parties. I may note that the respondents were not represented of the hearing of the present petition.

7. In view of the above, I set aside the impugned Award dated 15th July, 2003 as having been passed by the Arbitrator who had no jurisdiction or authority to act as an Arbitrator as he was not an Arbitrator duly appointed by law. The parties are free to get their disputes decided by an arbitrator who is appointed in accordance with law. With the aforesaid observation, the petition stands disposed of.