

11.1.2008.Present: Mr.J.S. Bhogal, Senior Advocate, with Mr.Anand Sharma, counsel for the applicant.  
Mr.K.D. Sood, counsel for respondents No.1 to 3.

**OMP No.486 of 2007:**

This order shall dispose of an application under Sections 14 and 15 of the Arbitration and Conciliation Act for terminating the mandate of the Arbitrator on the ground that has become de facto and de jure unable to perform his functions.

Notice of the application was issued to the respondents, who filed reply.

I have heard the learned counsel for the parties and have gone through the documents placed on record.

Brief facts are that in the matter pending before the learned Arbitrator, an application was filed by the applicant under Section 13 of the Arbitration and Conciliation Act making some allegations that the parties were proclaiming that they had reached an understanding with the Arbitrator and, therefore, the Arbitrator should not decide the case. The said application was rejected by the learned Arbitrator, vide his order, dated 28.12.2007, by passing a detailed order. A copy of this order has been placed on record.

I have considered the allegations made in the application as well as the order passed by the learned Arbitrator.

The learned counsel for the respondents has relied upon two decisions to substantiate his point that the Arbitrator's services cannot be terminated and this plea can be taken by the applicant after the Arbitrator gives his award. Reliance has been placed upon the decision of Delhi High Court in **Ahluwalia Contracts (India) Ltd. v. Housing & Urban**

**Development Corporation and Anr., 2007(4) Arb.LR 539 (Delhi),**

which was decided on 30.11.2007. In that case, similar plea was taken by the petitioner seeking termination of mandate of Arbitrator and appointment of any other person as Arbitrator. It was held by the Court that the petitioner can challenge the mandate of the Arbitrator after his award is pronounced under Section 34 of the Act and the petition was held to be not maintainable.

Reliance has been placed by the learned counsel for the respondents on another decision of Bombay High Court in **Hasmukhlal H. Doshi and another v. Justice M.L. M.L. Pendse and others, 2001(1) Arb.LR 87 (Bombay)**, decided on 17.4.2000. In that case also, similar question arose and it was held by the court that party could not be precluded from raising challenge under Section 34 of the Arbitration and Conciliation Act. Further the arbitral proceedings were allowed to be concluded.

No decision to the contrary has been cited by the learned counsel for the applicant, who relied upon the provisions of Section 14 of the Arbitration and Conciliation Act, 1996, which reads as under:

*"14. Failure or impossibility to act.- (1) The mandate of an arbitrator shall terminate if –  
(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay;  
and*

*.....  
....."*

I have considered the facts of the case. It cannot be said that the Arbitrator has become de jure or de facto unable to perform his functions since the allegations have been made by applicant and there is nothing on record to show that any act has been done by the learned Arbitrator which

makes him unable to perform his functions in a fair manner. Hence there is no merit in the application which is dismissed accordingly.

The learned counsel for the applicant has prayed that time to file written arguments before the learned Arbitrator may be extended, which were to be filed till today. The learned Arbitrator shall consider the plea and give time of two weeks to the applicant/petitioner to file written arguments.

With the above observations the application stands disposed of.

Dasti copy.

**January 11, 2008.**  
(TILAK)

**(V.K. Ahuja), J.**