

**(2011) 11 DEL CK 0077**

**Delhi High Court**

**Case No:** R.P. No. 643 of 2011 in C.M. (M) No. 1327 of 2010

Delhi Metro Rail Corporation Ltd.

APPELLANT

Vs

Ms. Poonam and Others

RESPONDENT

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**Date of Decision:** Nov. 2, 2011

**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 8
- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Advocate:** Ankur Gupta, for the Appellant; R.K. Saini, for R-1/Review petitioner and Mr. B.V. Niren, for R-2, for the Appearing Parties

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### **Judgement**

Valmiki J Mehta, J.

CM No. 19988/2011(for condo nation of delay)

1. Delay in filing the review petition is condoned. CM stands disposed of.

R.P. No. 643/2011

2. By this review petition, the respondent no. 1/review petitioner seeks review/recall of the order dated 18.5.2011. The order dated 18.5.2011 is a consent order and which reads as under:

% 18.05.2011

Present: Mr. Ankur Gupta, Advocate for the Petitioner.

Mr. S.S. Jain, Advocate for the Respondents.

+CM (M) No. 876/2010 & CM (M) No. 1327/2010

It is agreed between the counsel for the parties that all the disputes/differences/issues/claims/counter-claims arising out of or in any manner related to the contractual relationship of the respondents taking a kiosk from the petitioner be referred to arbitration in the Delhi High Court Arbitration Centre. Ordinarily, as per the contract, it was the petitioner, who had to appoint the arbitrator but since the respondents have agreed to bear the complete costs of arbitration the petitioner has no objection if the disputes between the parties are referred to the arbitration of an Arbitrator of the Delhi High Court Arbitration Centre. I, therefore, appoint Smt. Kanwal Inder, Retired District and Sessions Judge, B-50B, Siddharth Extension, New Delhi (Tel. No. 26344006) as an Arbitrator to enter upon the reference and to decide all disputes/differences/claims/counter-claims arising out of or in any manner related to the contractual relationship of the respondent taking a kiosk from the petitioner and also with respect to issues which are raised in the suits pending between the parties. Parties agree to be bound by the Rules of the Delhi High Court Arbitration Centre. Let a copy of the present order be sent to the Delhi High Court Arbitration Centre and also dasti be given to counsel for the parties so that they can approach the Delhi High Court Arbitration Centre. With the aforesaid observations, the petition stands disposed of.

The suits also accordingly will stand referred to arbitration in terms of this order and disposed of.

3. The aforesaid consent order came to be passed in a petition under Article 227 of the Constitution of India by the petitioner/Delhi Metro Rail Corporation Ltd. against the impugned judgment of the Trial Court dated 11.8.2010 which had dismissed the application filed u/s 8 of the Arbitration and Conciliation Act, 1996 for reference of the disputes in the suit to arbitration as there was an Arbitration Clause in the license agreement between the parties. The respondent no. 1/plaintiff had taken licensed stalls/kiosks at Kashmere Gate Metro Station, New Delhi from the petitioner herein. The stalls allotted were stalls No. 43-49. A license agreement dated 2.6.2005 was duly executed between the petitioner/licensor and the respondent no. 1/licensee. Clause 22 of this license agreement contains an Arbitration Clause.

4. The application u/s 8 of the Arbitration and Conciliation Act, 1996 was filed by the petitioner in the suit filed by the respondent no. 1 before the Additional District Judge, New Delhi for declaration, permanent injunction and recovery of Rs. 14,78,500/- as disputes and differences had arisen with respect to the licensed stalls. The petitioner stated that the respondent no. 1/plaintiff had failed to pay the license fee, electricity charges and other administrative charges and yet failed to vacate and hand over possession of the stalls/kiosks and therefore the petitioner took possession of the stalls/kiosks from respondent no. 1 in accordance with the terms and conditions of the license agreement.

5. The main petition, as stated above was disposed of by the consent order dated 18.5.2011.

6. Now by this review/recall petition, the respondent no. 1/review petitioner states that her Advocate gave consent to arbitration without taking consent from her. It is also argued that the costs of arbitration of the Delhi High Court Mediation and Conciliation Centre are prohibitive and the respondent no. 1/review petitioner cannot bear the same. Other averments have also been made in the review petition on merits as to why the matter cannot be referred to arbitration.

7. In my opinion, the review petition is misconceived inasmuch as it is not disputed that the concerned Advocate who appeared for the respondent no. 1 was authorized by the respondent no. 1 to appear in this Court. To my best recollection, the counsel for the respondent no. 1 was also instructed/briefed by the brother of the respondent no. 1, who is an Advocate. In fact, this brother of the respondent no. 1, who is an Advocate, is present in Court even during the hearing of this review petition. It is not permissible for a party to back out from a consent order merely because subsequently the party has second thoughts. A consent order cannot be backed out from only because a person has second thoughts subsequently. This is impermissible in law. To test the credibility of the claim in the review petition that the consent is being sought to be recalled because the Arbitration by the Delhi High Court Mediation and Conciliation is costly, I put it to counsel for the review petitioner that if that be so, there can be Arbitration by a retired Additional District Judge who would take about Rs. 55,000/- and complete the Arbitration in a time-bound manner. However, counsel for the review petitioner, after seeking passover of the matter for instructions, states that the review petitioner is in fact not at all interested in arbitration. Quite clearly, the conduct of the review petitioner and the counsel who appeared for her leaves much to be desired.

8. Various other grounds which have been raised in this petition are, in fact, grounds of merits in support of the impugned order dated 11.8.2010 and which grounds do not arise once it is found that the order dated 18.5.2011 is a consent order.

9. In view of the above, there is no merit in the review petition which is quite clearly an abuse of process of law by a litigant who is playing fast and loose by seeking to be clever by half. Since the appellant has been unnecessarily burdened with appearance in the present matter, the present review petition is dismissed with costs of Rs. 10,000/- and which shall be paid within 2 weeks from today.