In view of the above conclusion, it is not necessary to advert to the other contentions advanced at the Bar on behalf of the respondent-State.

(11) Consequently, we hold that the petitioners who are appointed only on *ad hoc* basis and who accepted their appointment with a clear stipulation that the tenure of their service would terminate as soon as suitable candidates are available for regular appointment cannot acquire any legal or even equitable right for being absorbed in the regular vacancies. In the absence of such a right, the present writ petition filed by them is not competent nor can the relief prayed for be granted to them in this petition, which stands dismissed. However, we make no order as to costs.

D. S. Tewatia, J.—I agree.

H. S. B.

Before D. S. Tewatia, J.

V. K. CONSTRUCTION WORKS (P) Ltd.,—*Appellant.*

versus

M/S FOOD CORPORATION OF INDIA

AND ANOTHER,—*Respondent.*

First Appeal From Order No. 247 *of* 1983.

and Cross-Objection No. 48-*CII of* 1983.

May 30, 1986.

Arbitration Act (*X of* 1940)—*Sections* 8 *and* 20(4)—*Arbitration agreement specifically authorising a designated authority to appoint an arbitrator—Authority entitled to make appointment failing to do so—Failure as aforesaid—Whether disentitles a party to seek a reference to arbitration.*

Held, that the substantive provision which confers a right to approach the Court is Section 8 of the Arbitration Act, 1940, and the provisions of Section 20 provides the machinery for enforcing that

right. Under section 8 of the Act the Court can appoint an arbitrator (1) either when the agreement provided a reference to an arbitrator with the concurrence of both the parties and the parties did not concur in the appointment of the arbitrator, and (2) if the appointed arbitrator neglects or refuses to act or becomes incapable of acting or dies and the arbitration agreement did not show that it was intended that the vacancy should not be supplied and the parties or the arbitrator, as the case may be, did not supply the vacancy. Where, however, the aforesaid two situations are not available and if for any reason either the arbitrator is not appointed or if appointed the arbitrator is not able to act then a party is not entitled to seek a reference to arbitration.

(Paras 5 and 6)

Ved Parkash Mithal *vs.* Union of India and others A.I.R. 1984 Delhi 325.

(Dissented from).

First Appeal from the order of Sh. Babu Ram Gupta, HCS Sub Judge Ist Class, Chandigarh, dated 5th February, 1983, dismissing the petition and leaving the parties to bear their own costs.

CROSS-OBJECTIONS NO. 48-S-II of 1983.

Cross-objections on behalf of Respondent No. 1, praying that the Cross-objections of the respondents may be accepted and issues No. 2 to 5 may be decided in favour of the respondents and against the petitioner applicants.

R. S. Mongia, with Satinder Bansal, Advocates,—*for the Appellant.*

Gopi Chand, Advocate,—*for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

(1) This appeal at the instance of the plaintiff is directed against the order dated 5th February, 1983 of the trial Court rejecting the petition of the plaintiff dated 5th February, 1982 seeking the filing of the agreement between them under the Indian Arbitration Act, 1940, hereinafter referred to as the Act, and referring the dispute between the parties to an arbitrator in terms of section 20 of the said Act.

(2) The trial Court dismissed the application of the plaintiff inapplicable.
on the ground that the provisions of Section 20 of the Act were

(3) Before proceeding to consider the rival contentions addressed at the Bar, it would be apt to notice at this stage the relevant provisions of section 8 and section 20 of the Act :

"8. (1) In any of the following cases—

(a) Where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not after differences have arisen, concur in the appointment or appointments ; or

(b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or the arbitrators, as the case may be, do not supply the vacancy ; or

(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him ;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

* * * * *

20. (1) Where any person have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement

applies they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant or plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than, the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable."

Mr. R. S. Mongia, counsel for the appellant, on the strength of the Full Bench decision of the Delhi High Court in *Ved Parkash Mithal* v. *Union of India and others*, (1), canvassed that the Court erred in holding that the provisions of sub-section (4) of section 20 of the Act were not attracted to the facts of the present case and that the Court was not competent to order the filing of the agreement and make a reference of the dispute to the arbitrator. The learned counsel highlighted the fact that the arbitration Clause, that was construed by the Full Bench, was identical to one which is required to be construed in the case in hand and then concluded that

(1) A.I.R. 1984 Delhi 325.

the decision of the Full Bench squarely covered the present case.

(4) The arbitration Clause in the agreement in the present case, which according to the learned counsel for the defendant-respondent, foreclosed the arbitration in the matter, runs as follows :

"25. Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or material used on the work or as to any other question, claim, right matter or thing, whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the work or after the completion or abandonment thereof shall be referred to the sole arbitration of a person appointed by the Managing Director, Food Corporation of India at the time of dispute, or if there be no Managing Director, the administrative head of the said Corporation at the time of such appointment. It will be no objection to any such appointment that the arbitrator so appointed is a Corporation employee, that he had to deal with the matters to which the contract relates, and that in the course of his duties as Corporation employee, he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred, being transferred or vacating his office or dying or being unable to act for any reason, such Managing Director or administrative head as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the above at which it was left by his predecessors. *It is also a term of this contract that no person other than a person appointed by such Managing Director or administrative head of the*

Corporation as aforesaid should act as arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all."

The Division Bench decision of the Delhi High Court in *Kishan Chand* v. *The Union of India and another* (2), which decision the Full Bench has reversed, had held as under :

"It seems plain to us that section 8(1)(a) cannot be resorted to in the present case, for the *sine qua non* is that the arbitration agreement must be one which 'provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties.' That is not what the arbitration clause here 'provides'. On the contrary, it vests the power to nominate an arbitrator exclusively in the Chief Engineer, and, in one event, in the Administrative Head of the Central Public Works Department. 'Provides' is used in the sub-section to mean 'expressly stipulates'. When an arbitration agreement stipulates what the sub-section says, the sub-section applies. But, not otherwise. Other specific types of arbitration agreement are dealt with in sections 9 and 10 of the Arbitration Act. They, too, state what the arbitration agreement must 'provide' for them to apply. None of these sections 8, 9 or 10, are of general application in the sense that they may be applied to every known or conceivable form of arbitration agreement regardless of what it 'provides'.

That section 8(1)(a) cannot be applied to the agreement subsisting in the present case, is further manifest from the fact that the notice envisaged by it is impossible to be given. The petitioner could not rightly require the Union of India (the 'other party' to the agreement) to concur in the appointment of an arbitrator, for that is not what the agreement 'provide'. Instead, what the petitioner has done in the notice which he has sent, is to require the Chief Engineer to appoint an arbitrator. Such a notice does not conform to the requirements of section 8(1)(a) because it is not addressed to the 'other party' which the Chief Engineer certainly is not; and, also

(2) I.L.R. (1974) II, Delhi 637.

> it does not and, in the light of the agreement, could not solicit concurrence to the appointment of an arbitrator. For these reasons, which we have stated in brief, we would have no hesitation in holding that section 8(1)(a) of the Arbitration Act does not apply to this case, and that there is no power in the Court, notwithstanding all that has occurred, to appoint an arbitrator under the sub-section."

Chawla, J. who delivered the opinion for the Division Bench, noticed number of decisions of various High Courts projecting a contrary view and distinguished them. While dealing with the provisions of section 20(4) of the Act, the learned Judge observed that the said provision was based upon paragraph 17 of the Second Schedule to the Civil Procedure Code, 1908, as was made evident from the Notes on Clauses appended to the Statement of Objects and Reasons of the Bill which became the Arbitration Act, 1940. Sub-paragraph 4 of paragraph 17 aforesaid was in the following terms :

> "Where no sufficient cause in shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement, or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator."

The learned Judge attempted the comparison of the said sub-paragraph with the provision of sub-section (4) of section 20 of the Act in the following words :

> "A comparison of this sub-paragraph with section 20(4) shows that the words 'appointed by the parties ..... in the agreement' have been substituted for the words appointed in accordance with the provisions of the agreement', and the word 'otherwise' has been substituted for the words 'if there is no such provision'. Rendering the present phrases in terms of the earlier equivalents reveals that 'appointed by the parties ——— in the agreement signifies an appointment 'in accordance with the provisions of the agreement'. And, 'otherwise' is when

'there is no such provision' — which accords with the view in *Fertilizer Corporation of India Limited* v. *M/s. Domestic Engineering Installation*, (3). The purpose and the effect of the word 'otherwise' is to vest express power in the Court to grant its imprimatur to the appointment of an arbitrator made by the parties 'otherwise' than in the agreement. In the earlier sub-paragraph such an express power was wanting, though perhaps it might legitimately have been inferred."

Chawla, J. while interpreting the underlined portion of the arbitration agreement, on which the case of the defendant-respondent rested, had the following to say :

"Assuming that the requirements of section 8(1)(b) are completely fulfilled, including that as to notice to the other party, though these are matters on which we express no opinion, yet, it seems to us, there is an insuperable obstacle to the appointment of an arbitrator by the Court. It will be recalled that the arbitration clause categorically states :

'It is also a term of this contract that no person other than a person appointed by such Chief Engineer or administrative head of the C.P.W.D., as aforesaid should act as arbitrator, and if, for any reason, that is not possible, the matter is not to be referred to arbitration at all. '

Obviously, the purpose of this stipulation was to negate the power of the Court to appoint an arbitrator under the Arbitration Act. Conceivably, no other authority or person could have or obtain the power to appoint an arbitrator to determine disputes arising out of the agreement. So absolute is the stipulation made that if, for any reason, it is not possible that an arbitrator be appointed by the Chief Engineer or the administrative head of the C.P.W.D., the arbitration agreement itself is destroyed."

(3) A.I.R. 1970 All. 31.

After referring to the following paragraph from 'Russell on the Law of Arbitration', 18th edition, page 1, the learned Judge observed that such a stipulation was not invalid :

> "The parties to an arbitration may in large degree themselves determine the procedure to be followed and the powers the arbitrator is to have, as well as the constitution of the arbitral tribunal. The Act lays down a code governing all these matters, but many of its provisions may be excluded by agreement between the parties."

Chawla, J. was of the view that the above fact was borne out from the two English cases and he observed :

> "This is borne out by two English cases. In Re An Arbitration between Villiams and Stepney, (4) and In Re An Arbitration between Wilson and Sons, and The Eastern Countries Navigation And Transport Company, (5). In the latter of these cases the question was whether the Court could appoint an arbitrator under section 5(b) of the English Arbitration Act 1899, which was nearly identical with section 8(1)(b) of the Indian Arbitration Act 1940. Dealing with this question, Mr. Justice A. L. Smith said :
>
> '.....the Act applies so as to introduce certain provisions into a submission, unless the contrary is provided. In the present case the contrary is provided.'
>
> That is also the position here. Therefore, we hold, that the Court has no power to appoint an arbitrator under section 8(1)(b) as that power has been expressly excluded by the arbitration clause."

The Full Bench in *Ved Parkash Mithal's case* (supra) while entirely endorsing the Division Bench view regarding the inapplicability of the provisions of section 8(1)(a) and section 8(1)(b) of the Act,

(4) (1891) 2 Q.B.D. 257.
(5) (1891) 1 Q.B.D. 81.

strongly advocated a contrary view regarding the construction and the applicability of the provisions of section 20 of the Act, in the face of the stipulation in the arbitration clause referred to earlier. The Full Bench expressed its view in this regard in the following words :

> "In Kishan Chand's case (supra), the learned Judges held that under section 20(4) the Court would be unable to deal with a situation in which the person designated failed or refused to appoint. With great respect, we are unable to agree with this conclusion."

The Full Bench then noted the fact that the Court under sub-section (4) of section 20 of the Act could direct the Chief Engineer who under the arbitration clause was to appoint an arbitrator and that they had no doubt in their mind that when the Court was to direct the Chief Engineer to appoint the arbitrator, the Chief Engineer would comply with the order of the Court, and if despite direction of the Court, he refused to make the appointment, the Court was not powerless, in that event it could make the appointment itself, because in such a situation it would be a case 'where the parties cannot agree upon an arbitrator' and for the above view, the learned Judges of the Full Bench sought support from the following observations in *Union of India* v. *Prafulle Kumar Sanyal,* (6) :

> "In the instant case, as an arbitrator has not been appointed by the parties and as the parties are not agreed upon an arbitrator the Court may proceed to appoint an arbitrator, but in so doing it is desirable that the Court should consider the feasibility of appointing an arbitrator according to the terms of the contract. In this case the respondent in his petition has prayed for an appointment of an arbitrator under the terms of the agreement. Before us both the parties expressed a desire that the President should be asked to appoint an arbitrator according to Clause 29 of the agreement. We feel that there could be no objection to this suggestion and we accordingly ask the President to appoint an arbitrator as contemplated under Clause 29 within two months from today. The

(6) A.I.R. 1979 S.C. 1457.

arbitrator so appointed will immediately enter on his duties and dispose of the reference as expeditiously as possible. The appeal is accordingly allowed. The President will appoint the arbitrator within two months from today, failing which Mr. Tapash Banerjee who was appointed as an arbitrator by the single Judge of the Calcutta High Court will enter upon his duties."

When the counsel for the Union of India brought to the notice of the Full Bench that in the case before the Supreme Court—*Prafulla Kumar Sanyal's case* (supra), there was no such stipulation in the arbitration clause as was the case in *Kishan Chand's case* (supra) and, therefore, in *Kishan Chand's case* (supra) the law was correctly laid down, the learned Judges disagreed with that submission and observed as under:

"The Chief Engineer is not the Arbitrator. He is the chosen appointer of the parties. It is true that he is an employee of one of the parties to the dispute. But that does not mean that he can take sides. He has to do his duty under the clause. The parties have reposed confidence in him and his integrity. To the Government he will show no favour. He can be neither loyal nor disloyal to the master. He can be neither friend nor enemy of the parties. If the Chief Engineer does not appoint the arbitrator he must justify his refusal and support it with reasons. If the refusal is arbitrary the Court will correct the Chief Engineer and tell him where his duty lay. He is given the duty to appoint the arbitrator and not to destroy the clause. It is a misreading of the clause to say that if the Chief Engineer refuses to appoint the arbitrator the Court is powerless. Such a view as the Judges of the Division Bench took belittles the effectiveness of the provisions of section 20(4) on the ground that it does not provide for a case as had arisen before the Division Bench and before us in this Full Bench. The legislature foresaw that such a case can arise and, therefore, section 20 provides that the Court shall follow this course. In the first place, the Court shall ask the person designated to appoint the arbitrator. Secondly, if he does not appoint, the Court shall appoint the

arbitrator. Where the parties cannot agree upon an arbitrator the Court at once comes in and appoints the arbitrator. This is the course the Supreme Court followed in Prafulla Kumar's case (supra). And this is the course we are inclined to follow in this case.

As we have said above the Chief Engineer will certainly appoint an arbitrator when the Court directs him to do so, after listening to the objections of the Union of India, who resist the appointment on one ground or the other. The Chief Engineer must mention a reason for his refusal. If the Chief Engineer gives reasons that are quite satisfactory the Court may agree with him and refuse to appoint the arbitrator and in that case refuse to file the arbitration agreement. But reason he must give. There must be a good reason to act. And there must be a good reason not to act. The Chief Engineer must take a sane and a sound view. The party has the right to know the reason why he is not appointing the arbitrator. The Court will then rule upon his reason. If the reason is bad the Court will direct him to appoint the arbitrator. This is as simple as that. We have no doubt that he will obey the Court and discharge his duty under the clause.

The clause which the Division Bench thought was an 'absolute' stipulation uses two critical words 'reason' and 'possible'. These are strong words. The Chief Engineer's action must be dictated by reason. Reason is used in contradistinaction to caprice. The word 'possible means that it is within the realm of the practical. If it is within the range of possibility the Chief Engineer must do his duty. It may be impossible to appoint an arbitrator where the office of the Chief Engineer is abolished and there is no administrative head of the department either. In that case, it may well be argued that the matter is not to be referred to arbitration at all. We can conceive of those cases where the nominator of the arbitrator is not in existence. But so long as the office of the Chief Engineer exists we cannot conceive that there can be an 'insuperable obstacle' to the appointment of the arbitrator by the Court as the Division Bench thought in

Kishan Chand's case. Section 20(4) shows that the refusal by the Chief Engineer is capable of being surmounted. There is nothing new or novel in the clause which says that no person other than a person appointed by the Chief Engineer shall act as the arbitrator and if for any reason, that is not possible the matter is not to be referred to arbitration at all.

The clause shows that the Chief Engineer is accountable to the Court. He cannot say that he is not answerable to any one, as was argued before us on behalf of the Union of India. He is amenable to our jurisdiction under section 20(4). He is not above the law. Nor is he a law unto himself. The contract which contains the arbitration clause is a business document. We must give it business efficacy so as to effectuate the intention of the parties. We will be doing great injustice to the contractor if we tell him that the Chief Engineer has destroyed the clause and we are powerless to redress his grievance."

* * * * *

Suppose the Chief Engineer refuses or neglects to appoint the arbitrator, where do we go from here? Can the Judge fold his hands and say, 'I have no power ?' In that case the arbitration agreement is itself destroyed. But it is dangerous so to hold. In our opinion, Section 20(4) certainly comprehends a case covered by Section 4 of the Act. Section 4 enacts that the person designated shall appoint the arbitrator. But the residual jurisdiction is vested in the Court under Section 20(4). The Court will lean in favour of exercising its power to effectuate the arbitration agreement. We ought not to be judicial encouragement to the hands-off theory propounded by the Division Bench in Kishan Chand (supra). They ousted the jurisdiction of the Court to appoint an arbitrator under S. 20 (4). Thus, the power of the Court was nullified.. The result was that the clause was destroyed and the power of the Court was destroyed. We cannot agree with such a a conclusion on the meaning of the clause.

The dominant theme of the Division Bench in Kishan Chand is that power to appoint the arbitrator is in the Chief

Engineer. There was no power in the Court, they thought. On their reasoning it is the Chief Engineer's prerogative to appoint or refuse and no one could question his decision. The moment the Chief Engineer refuses, the clause goes. They hold that if the appointer refused to appoint it was impossible to arbitrate. Such is the line of their reasoning. This is a fallacious reasoning, in our respectful opinion. Such absolute power as they give to the Chief Engineer is unknown to law whatever be the field — contract or administrative law. The Chief Engineer has a ministerial act to perform. He is a third party. It is a confusion of thought to identify him with the party to the litigation. It is another thing that the disputes relate to his department and he is the Government's own man. But his role is secondary. He cannot be given a place of primacy. He cannot be allowed to destroy the clause. It is for the Union of India to raise objection to the filing of the agreement ond to give reasons for not going to arbitration. That reason is subject to the scrutiny of the Court. The Chief Engineer's role is passive. The Union of India plays the active role in the legal battle.

The truth is that the Division Bench did not differentiate between a judicial act and a ministerial act. As opposed to a judicial act a ministerial act is an act or duty which involves the exercise of administrative powers. If the Chief Engineer refuses to appoint he refuses to do his duty. This is administrative nihilism, if we may call it. He stultifies himself. But the clause he cannot destroy.

He does not exercise any individual judgment or discretion in the role assigned to him. In the mode of exercise of his power he has no discretion. To hold that he can destroy the clause is to give him a power which he does not possess."

With respect, I entirely agree with the view which the Division Bench in *Kishan Chand's case* (supra) has taken. The Supreme Court judgment, on which the Full Bench had placed reliance — *Prafulla Kumar's case* (supra), is not at all an authority for the applicability of the provisions of section 20(4) of the Act where in the arbitration clause the kind of stipulation is made which was

the case in *Kishan Chand's case* (supra) and which is also the case in the case in hand.

(5) In fact, the substantive provision which confers a right to approach the Court is section 8 of the Act and the provisions of section 20 provide the machinery for enforcing that right, as held by their Lordships in *M/s. Prabhat General Agencies etc.* v. *Union of India and another* ,(1), as is evident from the following observations made therein :

> "Section 20 is merely a machinery provision. The substantive rights of the parties are found in section 8(1)(b). Before S. 8(1)(b) can come into operation it must be shown that (1) there is an agreement between the parties to refer the dispute to arbitration, (2) that they must have appointed an arbitrator or arbitrators or umpire to resolve their dispute, (3) anyone or more of those arbitrators or umpire must have neglected or refused to act or is incapable of acting or has died ; (4) the arbitration agreement must not show that it was intended that the vacancy should not be filled and (5) the parties or the arbitrators as the case may be had not supplied the vacancy."

Under section 8 of the Act, the Court can appoint an arbitrator (1) either when the agreement provided a reference to an arbitrator with the concurrence of both the parties and the parties did not concur in the appointment of the arbitrator, and (2) if the appointed arbitrator neglects or refuses to act or becomes incapable of acting or dies and the arbitration agreement did not show that it was intended that the vacancy should not be supplied and the parties or the arbitrator, as the case may be, did not supply the vacancy. In the present case, the parties were not to concur in the appointment of the arbitrator. The parties in the present case had agreed to the appointment of an arbitrator by the Managing Director or the head of the department. In the present case, the second situation also did not arise, because no arbitrator had been appointed and the arbitration clause did specifically envisage that if for any reason arbitrator is not appointed or if appointed, fails to act, the matter shall not be referred to arbitration at all.

(1) A.I.R. 1971 S.C. 2298.

(6) The learned Judges of the Full Bench in *Ved Parkash Mithal's case* (supra) held the view that the person who had been authorised in the agreement to appoint the arbitrator had to give reasons for his not appointing an arbitrator. With great respect, the aforesaid construction of the underlined stipulation in the arbitration clause is not correct. The expression 'if for any reason' cannot be construed in the manner in which it has been construed by the Full Bench. It is not a question of 'any reason' cannot mean 'no reason'. In my opinion, what the parties, while making the said stipulation, intended and meant was something like their saying 'If for any reason I do not reach such and such place at such and such time, then you are no longer to wait for me.' The party, which was supposed for any reason not to reach the given place by the appointed time, was not required to give reason as to why it could not reach a given place at a given time. The stipulation was intended to free other party from waiting after the appointed time. Same is the case here. If for any reason either the arbitrator is not appointed by the Managing Director or, if appointed, for any reason the arbitrator is not able to act, then the matter is not to be referred to the arbitration.

(7) For the reasons aforementioned, I am of the view that the Court below has taken a correct view of the arbitration clause and has rightly dismissed the application of the plaintiff-appellant. Hence, I find no merit in this appeal and dismiss the same. The cross-objections also stand disposed of accordingly. However, there is no order as to costs.

R. N. R.

FULL BENCH

Before: *P. C. Jain, C.J., D. S. Tewatia and S. P. Goyal, JJ.*

ROMESH KUMAR,—*Petitioner.*

versus

ATMA DEVI and others,—*Respondents.*

Civil Revision No. 412 of 1980.

August 9, 1985.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(b)—Landlord seeking eviction of tenant on ground of personal