

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P.No.235 of 2014

1.M.Srirangarayan

2.M.Vaseekaran Rayan

... Petitioners

-vs-

1.K.N.Palaniappan

2.C.Palanivelu

3.P.Angayarkanni

4.H.S.Md.Rafi, Arbitrator,
No.1-3rd Floor, Prince Plaza,
No.73/43, Pantheon Road,
Egmore, Chennai-600 008.

5.M/s.Visaka Engg. (P) Ltd.,
rep. by its Managing Director
K.N.Palaniappan

.. Respondents

Prayer: Original Petition filed under Section 14 of the Arbitration and Conciliation Act, 1996 to remove the fourth respondent from continuing as an Arbitrator and appoint a new Arbitrator to conduct the Arbitration Case No.1/2007.

For Petitioners : Mr.V.P.Sengottuvel

For Respondents : Mr.N.Umapathi

ORDER

This petition is filed in terms of Section 14 of the Arbitration and Conciliation Act praying for the termination of the mandate of the fourth respondent as an Arbitrator and appointment of a new Arbitrator to conduct Arbitration Case No.1/2007.

2.Heard Mr.V.P.Sengottuvel, learned counsel appearing for the petitioners and Mr.N.Umapathi, learned counsel appearing for the respondents.

3.This case has a checkered history. The commencement of proceedings for arbitration is as early as on 10.02.2007 when the claim settlement was filed. According to the learned counsel for the petitioners, proceedings were being conducted regularly till the hearing on 13.09.2008, when both parties were present. However, thereafter, the matters were taken up for hearing only on 28.02.2011. This, according to learned counsel constitutes 'undue delay' bringing the matter within the the purview of Section 14(1)(a) of the Arbitration and Conciliation Act extracted below:

- 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....

4. In view of the above, he would seek the substitution of the present Arbitrator with a new Arbitrator for continuation of proceedings. In fact, it appears that the petitioners were before this Court earlier in O.A. No.1234 of 2010 and this Court, noting the demise of the main applicant passed the following order on 03.12.2013:

It is stated that the applicant in the main application expired one year ago. No steps have been taken so far. Therefore all the applications are dismissed as having abated. Consequently applications filed by third parties also abated.

5. This petition has been filed immediately thereafter and a stay of proceedings for arbitration obtained on 09.11.2011 currently in force. It seems to me that it is, in fact, the petitioners that have been delaying the proceedings. Thus, there is no delay, much less, undue delay caused by the Arbitrator in the matter.

6. This petition is dismissed with a direction to both parties to appear before the learned Arbitrator on 08.09.2017 for continuation of the proceedings and completion of the same as expeditiously as possible and in any event, within a period of three months from the date of first hearing to be held on 08.09.2017.

DR.ANITA SUMANTH,J.

vga

7.In the event, the aforesaid date is not convenient to the learned Arbitrator, an alternate date proximate to 08.09.2017 may be fixed by him. No costs.

29.08.2017

vga

Note: Issue order copy on 31.08.2017



O.P.No.235 of 2014

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