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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL JURISDICTION

COMMERCIAL ARBITRATION PETITION (LDG.) NO.323 OF 2018

Sanjay R. Dhote & Anr.	...Petitioners
V/s.	
Karla Farms & Ors.	...Respondents

Mr.Farhan Dubash with Mr.Soura S. Ghosh and Ms.Parinaz Nagporwalal i/b M/s.Hariani & Co. for the Petitioners.

Mr.Tushad Cooper with Ms.Namrata Shah Saurashtri i/b K.Ashar & Co. for the Respondents

CORAM : R.D. DHANUKA, J.
DATE : 4TH APRIL, 2018.

P.C. :-

1. By this petition filed under section 29-A of the Arbitration & Conciliation Act, 1996 the petitioners seek extension of six months time from 21st March,2018. By an order dated 29th March, 2016 in Suit (Lodging) No.269 of 2016, a senior counsel of this Court was appointed as the sole arbitrator by consent of both the parties. 18 months period has expired. By an order dated 21st September, 2017, this Court granted six months extension to conclude the arbitral proceedings and to publish an arbitral award. Six months extension period has expired on 20th March, 2018.

2. It is not in dispute that pursuant to the directions issued by the learned arbitrator, the properties which are subject matter of the dispute before the learned arbitrator are agreed to be sold. The objection is about the apportionment. The terms and conditions of the auction are to be finalized.

3. The application for extension of time is vehemently opposed by the learned counsel for the respondents on various grounds. It is submitted by Mr.Cooper,learned counsel for the respondents submits that though the last extension was granted by this Court in the month of September, 2017, the learned arbitrator called the next meeting only in the month of February, 2018 i.e. after expiry of about five months. He submits that the arbitral proceedings thus shall be terminated and the parties shall be relegated to Suit (Lodging) No.269 of 2016. In his alternate submission, it is submitted that if this Court is inclined to grant extension of time to make an award as prayed in the arbitration application by the petitioners, this Court shall substitute the learned arbitrator by appointing a junior counsel of this Court.

4. Mr.Dubash, learned counsel for the petitioners in rejoinder, submits that the respondents did not raise any objection before the learned arbitrator as to why the meeting was called in the month of February, 2018. He invited my attention to the minutes of meeting

dated 14th March, 2018.

5. A perusal of the said minutes of meeting passed by the learned arbitrator indicates that the respondents were mainly responsible for the delay in conducting the arbitral proceedings. It is not in dispute that the share of the parties in two partnership firms are not in dispute. Various attempts for auctioning the property of the partnership firm are already made as is clear from the minutes of the meeting dated 17th February, 2018 of the learned arbitrator. The terms and conditions of the auction are already finalized. In these circumstances, I am not inclined to accept the submission made by Mr.Cooper, learned counsel for the respondents that there is no progress in the matter and thus the proceedings shall be terminated and the parties shall be relegated to the suit in which the learned arbitrator came to be appointed by this Court or that some other arbitrator shall be appointed.

6. In my view, even if the arbitral proceedings are terminated under section 29-A of the Arbitration & Conciliation Act, 1996, the arbitration agreement which is entered into between the parties before this Court on 29th March, 2016 will not come to an end. In these circumstances, I am inclined to grant further extension of six months as prayed by the petitioners in this petition with effect from 21st March,2018. It is made clear that no further extension of time

would be granted. Both the parties are directed to co-operate with each other and also with the learned arbitrator in rendering the arbitral award within the extended period. The learned arbitrator shall not grant any unnecessary adjournment to any of the parties. If any party applies for adjournment, the same shall be reflected in the award that would be made by the learned arbitrator.

7. The arbitration petition is disposed of in aforesaid terms.
No order as to costs.

8. The petitioners are directed to convey this order to the learned arbitrator for compliance.

(R.D. DHANUKA, J.)