

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION No. 1323 of 2018

L & T Housing Finance LtdPetitioner.

Vs

Trishul Developers & OrsRespondents.

Mr Vyom Shah a/with Aziz Khan & Kajal Solanki for the petitioner.

Mr Dhananjay Joshi a/with Raju M. Jain for Respondent

CORAM : B. P. COLABAWALLA, J.

DATED :- 10th December, 2018.

P.C. :

1 This arbitration petition has been filed under Section 29A of the Arbitration and Conciliation Act, 1996 for seeking an extension of time for a period of six months to complete the arbitral proceedings and pass a final award. The reason why this extension has been sought is given in great detail in the petition. It has been stated in the petition that initially a petition under Section 9 came to be filed on 28th February, 2017. Thereafter, on 27th March, 2017 an order was passed

under Section 9, inter alia, under which by consent of both the parties, the name of the Arbitrator was agreed upon and the disclosure statement of the Arbitrator under Section 11 (8) read with section 12 (2) was to be filed before the Court. This disclosure statement was filed on 30th March, 2017 on which date the Arbitrator came to be appointed by this Court with the consent of both parties. Thereafter, in view of the fact that the Arbitrator was already appointed, on 7th April, 2017 this Court converted the petition that was filed under Section 9 as an application under Section 17 to be considered by the learned Arbitrator.

2 Thereafter, on 29th May, 2017 the Arbitrator was intimated by the petitioner about his appointment and which intimation was received by the Arbitrator on 2nd June, 2017. This is how the Arbitrator thereupon entered upon the reference and started the arbitration proceedings. It appears that the arbitration proceedings have not yet come to an end and in fact the parties before the Arbitrator also extended the time as contemplated under Section 29-A (3) of the said Act. That mandate has also been expired and hence the present petition.

3 The learned Advocate appearing on behalf of the respondents has opposed this petition on the ground that no sufficient cause has been made out for granting extension of time. According to the learned Advocate, the Arbitrator was appointed on 30th March, 2017 and even if one takes into consideration, the extension as contemplated under Section 29-A(3) of the said Act, the mandate of the Arbitrator stands terminated on 30th September, 2018 and this petition has been filed two months later seeking extension of time. This being the case, the learned Advocate appearing on behalf of the respondent submitted that there was no sufficient cause made out and hence the petition be dismissed. In support of this proposition, the learned advocate relied upon a decision of the Supreme Court in the case of Balwant Singh Vs. Jagdish Singh & Ors [(2010) 8 SCC 685] and a judgment of this Court in the case of Jahed Naziruddin Vs. State of Maharashtra [2014 (2) Mh.LJ 933].

4 I find the opposition of the respondents to be wholly frivolous. From the dates as mentioned above, the delay in completing arbitration proceedings cannot be attributed either

to the petitioner or to the learned Arbitrator. In fact, it has been brought to my notice that the respondents, though directed and subject to payment of costs, have not even filed their written statement before the learned Arbitrator. I find that this opposition at least prima facie, appears to be made to delay to the arbitration proceedings.

5 As far as the decisions relied upon by the learned counsel appearing on behalf of the respondents are concerned, I find that the same are wholly inapplicable to the facts of the present case. Firstly, as mentioned earlier, sufficient cause has been made out in the petition for granting the extension of time. Secondly, even otherwise these decisions were not rendered in the context of Section 29A of the Arbitration and Conciliation Act, 1996, but under Order XXII Rule 9 of the Code of Civil Procedure and Section 5 of the Limitation Act, 1963. This being the case, I find that these decisions are absolutely of no assistance to the respondents.

6 Considering the overall facts of the case and especially considering that the written statement has not been filed before the learned Arbitrator, I think this is a fit case to

extend the time to complete the arbitration proceedings and pass a final award for a period of one year from today. It is so ordered.

7 Since the objection taken by the respondents is found to be wholly frivolous, the respondents are directed to pay costs of Rs.50,000/- (Rupees Fifty Thousand) to the petitioner within a period of four weeks from today. If the same are not paid, the petitioner is at liberty to recover the same as an arrears of land revenue.

8 The Arbitration Petition is accordingly disposed of.

(B.P. COLABAWALLA, J.)