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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 655 OF 2019

Yash Mahendra Gala ...Petitioner
Versus
YS Enterprise & Ors ...Respondents

ARBITRATION PETITION NO. 658 OF 2019

Yash Mahendra Gala ...Petitioner
Versus
Golden Homes & Ors ...Respondents

ARBITRATION PETITION NO. 675 OF 2019

Yash Mahendra Gala ...Petitioner
Versus
Pharmacon Enterprise & Ors ...Respondents

Mr Vivek Kantawala, *with Amey Patil, Shanay Bafna, Vivek M Sharma & Hetal Jobanputra, i/b M/s. Vivek Kantawala & Co., for the Petitioner in all the petitions.*
Mr Mahendra K Ghelani, *i/b Law Charter, for Respondents Nos. 1 to 4 in all the petitions.*

CORAM: G.S. PATEL, J.
DATED: 5th November 2019

PC:-

1. There are disputes within the Gala and Chheda families. These pertain to six partnership firms. Five of these firms are in arbitration before a learned Advocate of this court. A sixth firm exists but is not (yet) in arbitration; an application under Section 11 of the Arbitration & Conciliation Act, 1996 was made and withdrawn.

2. All three petitions are for extension of time under Section 29-A of the Arbitration Act.

3. In view of the order that I propose to pass today, I believe it is first necessary to consider this section briefly. Section 29-A reads thus:

> "**29A. Time limit for arbitral award**.— (1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:
>
> Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.
>
> (2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) **The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months**.

(4) **If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate <u>unless the Court has, either prior to or after the expiry of the period so specified, extended the period</u>**:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) **The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court**.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

> (7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.
>
> (8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.
>
> (9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

4. Clearly, the statutory intent is to ensure that arbitrations are not unduly prolonged for whatever reason, and that they are completed within twelve months of the specified date. That date is the date of 'completion of pleadings' under Section 23(4) of the Act. Section 23(4) says that pleadings are to be completed within six months of the Tribunal receiving written notice of its appointment. Reading these two provisions together, Section 29-A(1) imposes a strict time limit. [1]

5. Section 29-A(3) allows parties to consent to an extension of up to six months but no more. If no award is made within that time or extended time, the arbitral mandate terminates — unless the Court extends that period. This is Section 29-A(4). That extension may be made by a Court either before or after the period ends.[2] The

1 We are not concerned here with the exemption made for international commercial arbitrations nor are we concerned with the question of additional fees under sub-clause (2). The section itself provides for some latitude.

2 Again there are provisions made in the provisos that are directed against the Tribunal but with which I am not concerned.

second proviso to Section 29-A(4) was added by the 2019 Amendment, the entire section itself having been introduced by amendment in 2015. The 2019 Amendment clarified that where an application is pending under sub-section (5), the Arbitral mandate continues until the disposal of the Application.

6. Sub-clause (5) is of importance for it is this that lays out the approach a Court must follow. It requires the Court to apply its mind to two distinct aspects. First, whether there is sufficient cause established for an extension, and, second, whether there is a need to impose any terms and conditions.

7. Section 29-A(6) extends judicial discretion further by permitting the Court to substitute one or all of the Arbitrators and says that the proceedings are to continue from the stage already reached. Sub-section (7) then says that the re-constituted Tribunal is deemed to be a continuation of the one previously appointed. Sub-clause (8) allows the Court to impose actual or exemplary costs upon any of the parties and this of course must be read to mean one of the litigating parties who the Court finds guilty of delaying the completion of the arbitration. In further emphasis of this timely completion of arbitration, Section 29-A(9) says that an application for extension must be disposed of as quickly as possible and preferably within sixty days of service of notice on the other side.

8. The three petitions before me were all filed on 4th May 2019. Arbitration Petition No. 655 of 2019 pertains to the disputes relating to the firm YS Enterprise. Arbitration Petition No. 658 of 2019 pertains to the partnership firm Golden Homes, and Arbitration Petition No. 675 of 2019 relates to the partnership firm Pharmacon Enterprises.

9. The Arbitral mandate in all three matters ended on 31st March 2019. The two other partnership firms in arbitration are Gala Builders and Paramount Realtors. There, the arbitral mandate ends in early-December 2019.

10. I will take the necessary details from paragraph 7 of Arbitration Petition No. 655 of 2019 (YS Enterprises). As this paragraph shows, the proceedings have been going on for quite a long time already; since mid-November 2016. That was the date of reference to the arbitration of the learned Single Arbitrator. While pleadings are complete in four of the five matters, there is some controversy as to whether points for determination have been formally settled. In the fifth matter (Paramount Realtors), pleadings are yet pending completion.

11. In the YS Enterprises partnership dispute, cross-examination began in July 2017. The petitioner/claimant was cross-examined, evidently at some debilitating length with over 600 questions being put to him. The Respondents' first witness has then been in cross-examination from August 2018 and those questions are now nearing the double-century mark. In the other three matters, where the pleadings are complete, no evidence has yet begun. This is the entirety of Mr Ghelani's complaint for the Respondents and on which he wants to put in an Affidavit in Reply, something I think is entirely unnecessary. He says nothing at all has happened in the other matters, and the overall progress is too slow to warrant any extension at all.

12. The partnership firms appear to hold several immovable assets: there are several in Mumbai and one in Khandala. There are also liquid assets, and there is above all the question of taking of accounts in all firms. Throughout, in all of these matters, the petitioner Yash Mahendra Gala is on one side and the other members of his family (and in at least two cases, third parties) are on the other.

13. There are now two considerations before me. Is it possible to say that these arbitration proceedings have been protracted by the learned Arbitrator? I do not think there is any remotest possibility of returning any such finding. Can I on the material before me conclude that one side is solely responsible for the delay? Even that is next to impossible. The length of this arbitration is perhaps due to the internal entanglement of these firms and their holdings, and the fact that members of the family (with or without others) holding differential rights in each firm under different partnership deeds in respect of different properties. At one level, all of these must be dealt with distinctly; there are, after all, distinct partnership firms. At another level, this is one common pool of litigants, with a single claimant on one side and everybody else on the other.

14. It is not possible in this situation, therefore, to say that there is insufficient cause to grant the extension. Unravelling this web is time-consuming in any forum, or by any professional. If, for instance — and I take this only illustratively — there is any movement of funds from one firm to another, and this is questioned, then it seems to me evident that in itself addressing any such transaction raises the level of difficulty quite considerably, and needs far more time in explanation, argument, pleading, evidence and documentation. An extension is, therefore, warranted.

15. This immediately raises the next issue of how long such an extension should be and whether in fact certain terms and conditions should be imposed.

16. At the hearing today, I suggested to both sides that it is perhaps best if instead of proceeding in this manner of taking up one firm after the other, the evidence of the claimant be taken in one continuous line followed by the evidence of the Respondents in all the five matters. Mr Ghelani is correct in saying that for each of the firms a different person may be required to give evidence. It is entirely possible that there may be different persons with the requisite personal knowledge of the affairs of each of the partnership firms. At the same time, I must be cognizant of the fact that in YS Enterprises at least the evidence of the claimant is complete and the cross-examination of the Respondents' first witness is already under way. There is no reason to interrupt that.

17. With their usual admirable fairness both sides have consented to the following:

(a) The time to complete the arbitration is extended till 18th June 2021. This is agreed to be treated as mandate for completion of the arbitration regarding all five firms by consent;

(b) Mr Kantawala states that he will endeavour to complete the pending cross-examination of the Respondents' current witness in the YS Enterprises case at the earliest possible and at any rate by March 2020;

(c) For YS Enterprise's case, Mr Ghelani confirms that as presently advised there is no other witness. He makes a statement that there are allegations against a professional consultant that may need to be properly rebutted, but he will evaluate that need at an appropriate time. ;

(d) Both sides agree that once the cross-examination of the Respondents' current witness (and further witness to rebut the misconduct allegations, if any) is done, the claimant's evidence for all the other four partnership firms, namely, Golden Homes, Pharmacon Enterprise, Gala Builders and Paramount Realtors will be led and he will be cross-examined in respect of all of them;

(e) Immediately thereafter Mr Ghelani will lead his witness(es) sequentially for the other four firms;

(f) As regards Paramount Realtors, parties agree that irrespective of the on-going cross-examination they will obtain directions from the learned Sole Arbitrator for completion of all pleadings by mid-January 2020.

(g) In order to ensure that there is no disruption of this schedule, points for determination that are yet pending finalization will also be finalized and settled by the end of January 2020;

(h) As and by way of abundant caution, both sides also agree before me now that should the Arbitrator indicate the need for extension, they consent to a further extension of three months after that date for completion of the arbitration, and will seek an appropriate order to that effect if thought fit

18. The only intention in imposing these conditions is to assist the Tribunal in achieving a timely completion of these arbitral proceedings.

19. Mr Kantawala points out that the claimant has filed his evidence in Gala Builder's arbitration and that he is scheduled to be cross-examined early next week. This is peculiar because the claimant is yet completing his cross-examination of the Respondents' witness in the YS Enterprises arbitration. I believe that starting one cross-examination of the Claimant while he is simultaneously cross-examining the Respondents' witness will only add to the confusion. Parties therefore agree that the scheduled cross-examination in Gala Builders will be deferred and the schedule indicated above will be followed instead.

20. It is of course open to the learned Arbitrator to fix precise dates.

21. Mr Ghelani seeks leave to make an application before the Arbitrator for necessary reliefs for protection or sale or disposal of assets on the basis that some are deteriorated due to passage of time. He also seeks leave to make an application for the appointment of a valuer. All these matters are clearly within the discretionary powers of the Arbitral Tribunal and no leave from the Court is required. I only note Mr Kantawala's submission that similar applications have been made in the past and have been rejected. This does not prevent Mr Ghelani from making a second attempt nor does it prevent Mr Kantawala from opposing it. All these applications will be decided by the learned Sole Arbitrator.

22. All three Arbitration Petitions are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)