

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.733 OF 2018**

Jinaam Dress Pvt. Ltd.	..Petitioner
Vs.	
Asin Thottumkal & Ors.	..Respondents

Mr.Gopal Ozalwar i/b. Mr.Bhushan Mahadik for Petitioner.
Mr.Vikramjeet Garewal with Mr.Bharat Jain i/b. M/s.I.C. Legal for
Respondent No.1.
Ms.Juhi Dave i/b. M/s.Dhruve Liladhar & Co. for Respondent No.2.

CORAM : G.S. KULKARNI, J.

DATE : 11th JULY, 2019

P.C.:

Heard learned Counsel for the petitioner and the learned Counsel
for the respondents.

2. This is a petition filed under Section 29A of the Arbitration and
Conciliation Act, 1996 (for short, “the Act”).

3. Learned Counsel for the respondents at the outset has opposed
this petition pointing out conduct of the petitioner before the arbitral
tribunal. The learned sole arbitrator came to be appointed by an order
dated 5 April 2017 passed by this Court in the proceedings filed under
Section 11 of the Arbitration and Conciliation Act, 1996. However,
despite lapse of substantial time, the petitioner did not file Statement of

Claim. The learned arbitrator accordingly adjourned the arbitral proceeding and imposed cost on the petitioner. Despite second extension, the petitioner did not file the Statement of Claim. On 15 February 2018, statement of claim was taken on record subject to payment of costs, though the same was filed on 24 January 2018. On 1 March 2018 respondent Nos.2 and 3 filed their Statement of Defence and on 3 May 2018 respondent No.1 filed her Statement of Defence along with the counter claim. Thereafter the learned arbitrator was pleased to fix the arbitral proceedings on 1 June 2018 for further directions. However, the mandate of the arbitral tribunal had expired on 4 April 2018 and the respondent No.1 did not consent for extension of mandate. Therefore, the present petition has been filed.

4. Having perused the averments on record and in view of the above facts, it is quite clear that the petitioner was initially not diligent in pursuing the arbitral proceedings before the arbitral tribunal. Learned Counsel for the petitioner states that his client is now very much interested in the arbitral proceedings and he would seriously pursue the proceedings, if an extension is granted.

5. On 1 June 2018 the respondent No.1 did not consent for extension of mandate and the present petition is filed on 21 June 2018.

Admittedly though substantial time has lapsed, it cannot be overlooked that ultimately a statement of claim was filed on 24 January 2018 and made effective on payment of costs on 5 March 2018 and also thereafter on 3 May 2018 respondents filed their statement of defence and the arbitral proceedings could not proceed further in view of the fact that the mandate of the arbitral tribunal has expired on 4 April 2018 and the respondents did not give consent for extension of mandate.

6. In the facts and circumstances of the case, it is in the interest of justice that final extension of 12 months is granted, however with a condition that the petitioner shall co-operate and shall be diligent in pursuing the arbitration proceedings. The respondents cannot be compelled to suffer rigor of the proceedings by the petitioner not being diligent. If this be the situation and the arbitral tribunal is of the opinion that the petitioner is not serious about the proceedings and that in any manner the petitioners are delaying the proceedings, the arbitral tribunal would be entitled to take all appropriate measures as permissible under law including imposing costs on the parties and such other orders as permissible in law. With these observations, time to conclude arbitral proceedings is extended finally for a period of one year from today.

7. The petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]