

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1399 OF 2019
AND
ARBITRATION PETITION (L) NO. 1305 OF 2019**

Nehru Nagra Zunjar Cooperative Housing
Society Ltd

...Petitioners

Versus

Amogh Gajanan Sawant

...Respondent

Mr Wasim Ansari, for the Petitioners.

**CORAM: G.S. PATEL, J.
DATED: 20th November 2019**

PC:-

1. The respondent is absent though served. The petition is under Section 29-A of the Arbitration and Conciliation act 1996. It is the fourth such petition seeking an extension of the arbitral mandate of the learned sole arbitrator Mr Rohaan Cama, learned advocate of this Court. He was appointed as a sole arbitrator by an order dated 7th December 2016. The disputes arise under a development agreement dated 28th April 2008. Mr Cama entered upon the reference to his arbitration on 10th June 2017. Pleadings were complete and issues were struck thereafter. Parties agreed to an initial extension of six months.

2. That extended mandate lapsed and by an order dated 2nd July 2018, this Court extended the arbitral mandate for six months. The evidence of the claimant society was completed but the cross-examination for the respondent remained incomplete. The petitioner sought another extension since the arbitral mandate was now to expire on 31st December 2018. On 20th December 2018 this Court extended that mandate up to 31st June 2019.

3. The cross-examination of respondent was closed on 5th March 2019. The respondent sought leave to lead the evidence of yet another witness. This was opposed. Finally the learned sole arbitrator allowed the application subject to payment of costs and posted the matter on 22nd March 2019 for the cross-examination and on two days after for final arguments. The respondent did not file the evidence affidavit. It did not pay the costs ordered.

4. In the meantime parties entered into settlement negotiations. They took time by consent before the arbitrator and this delayed the arbitration's progress. Even when the arbitrator took up the matter on 28th June 2019 the parties sought time to work out a settlement.

5. The extended mandate ended on 30th June 2019. The petitioner filed a third arbitration petition seeking an extension and by consent this was allowed on 18th July 2019 extending the mandate to 31st October 2019. Yet again, in arbitration the parties sought adjournments for negotiations. For this reason they prevailed upon the arbitrator not to proceed with the hearing.

6. That extended mandate ended on 31st October 2019 and now this fourth petition comes to be filed seeking yet another extension.

7. Whether or not the parties consent, I am not prepared to have arbitrations carried on like this, at least not without putting the parties to some terms. There is no fault that can be attributed to the learned sole arbitrator. If the parties do not wish to progress before him saying that they are negotiating then there is not much that he can do. It is also not possible to say that one or the other side is entirely or even largely responsible for this delay. Both the petitioner and the respondent must take responsibility. Section 29-A(5) requires that sufficient cause be shown and that an extension can be granted on such terms and such conditions that Court deems fit. I will now grant the extension but subject to the following conditions:

- (a) Time is extended till 30th June 2020. This is last and final extension and there will not be another extension under any circumstances. The extra time is only as a courtesy to the learned sole arbitrator since he will have to collate and recall material that has been put before him in this piecemeal fashion since 2016 or 2017, never an easy task for any adjudicatory forum.
- (b) I will request the learned sole arbitrator to exercise his authority and refuse all adjournment requests barring a complete emergency such as accident or a medical condition.

- (c) The fact that the parties are negotiating will not be a reason to adjourn hearings scheduled by learned sole arbitrator.
 - (d) Having regard the manner in which the parties have chosen to proceed and the clear embarrassment caused to the arbitral tribunal, I am further making it clear that in exercise of my powers under Section 29-A(5), even if the parties settle their disputes before the award is pronounced and delivered, the arbitrator will not be required to make a refund of any part of the arbitral fees. This is a condition imposed on both sides in view of the manner in which this matter has progressed.
8. The Petition is disposed of in these terms.

(G. S. PATEL, J)