

A.No.6715 of 2019
in O.P.No.754 of 2017

M.SUNDAR, J.

Mr.T.S.Baskaran, learned counsel on record for the applicant/petitioner and Mr.G.Venkateswaran for Mr.S.Gopalakrishnan, learned counsel for the respondent/respondent are before this Court.

2. Instant application as per the judges summons, is under Section 29A of 'The Arbitration and Conciliation Act, 1996' ('A and C Act' for the sake of brevity). Be that as it may, from the prayer and contents of supporting affidavit, it comes to light that this application is under sub-section (4) of Section 29A of A and C Act as instant application is for extension of time for the Arbitral Tribunal by 12 months *inter alia* on the ground that the respondent company had to move an application under section 446(1) of the Companies Act, 1956 owing to winding up proceedings.

3. However, what is of significance is, instant application has been preferred on the basis that the 12 months time under Section 29A is from the date of the first sitting of the Arbitral Tribunal, which is plain incorrect. Sub section (1) of Section 29A states that the reckoning date is not the date of first sitting of the Arbitral Tribunal, but it is the date on which the Arbitral Tribunal enters upon reference. The expression 'enters

upon reference' has been explained by the statute by way of explanation to sub section (1) of Section 29A which reads as follows:

“For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

4. Though the reckoning date has been computed from the date of first sitting of the Arbitral tribunal, which is incorrect, the reason for the delay being convincing, this Court embarks upon the exercise of examining this application on merits. To be noted, the grounds on which extension is sought has been articulated in paragraph 4 of the affidavit filed in support of the instant application and the same reads as follows:

4) *I submit that, in view of the Order of Winding up passed against the Respondent Company, I was advised to move appropriate Petition under Sec 446 (1) of Company's Act, seeking leave of the Company Court to adjudicate the dispute between myself and the Respondent Company. The Application in Appl.No.690/2018, filed for leave of the Court was allowed by this Hon'ble Court by its Order dated 21.06.2019. In view of the leave granted by this Hon'ble Court in*

Appln No. 690/2018 in C.P. No.225/2011, I am entitled to prosecute the Respondent Company before the Arbitrator. In view of the expiry of period granted by this Hon'ble Court in conducting the Arbitrator proceedings, the present Application is filed seeking for extension of time for completing the Arbitration proceeding. Unless the time is extended, we will put to irreparable loss and hardship.

5. This takes us back to the date on which the Arbitral Tribunal entered upon reference. There is no dispute or contestation before this Court that Arbitral Tribunal constituted by a sole arbitrator was appointed by a learned Hon'ble Judge of this Court vide order dated 13.12.2017 made in O.P.No.754 of 2017. This order dated 13.12.2017 was made available to the parties on 09.02.2018 and this Court is informed that the sole arbitrator who constituted the Arbitral Tribunal had received the order of appointment on 12.02.2018. Therefore, the reckoning date for the purpose of Section 29A is 12.02.2018. Instant application came to be filed on 02.08.2019. To be noted, date of filing of instant application is of relevance, as the reckoning date changed, on and from 30.08.2019 vide notification of some sections of amending Act 33 of 2019. However, it is not necessary to dilate further in this aspect, in instant order. Suffice to say that 12 months from 12.02.2018 elapsed on 11.02.2019. Six months from

11.02.2019 which is the extended time (by the agreement between the parties) elapsed on 11.08.2019.

6. In the light of the narrative thus far, coupled with the fact that the respondent has no opposition or objection to this application (to be noted, the extension of time for the Arbitral Tribunal is a common plea made in unison by both sides), the instant application is ordered extending the time for making award by the Arbitral Tribunal (appointed by order dated 13.12.2017 by the Learned Hon'ble Judge of this Court) by ten months from today. i.e., up to 04.10.2020.

06.12.2019

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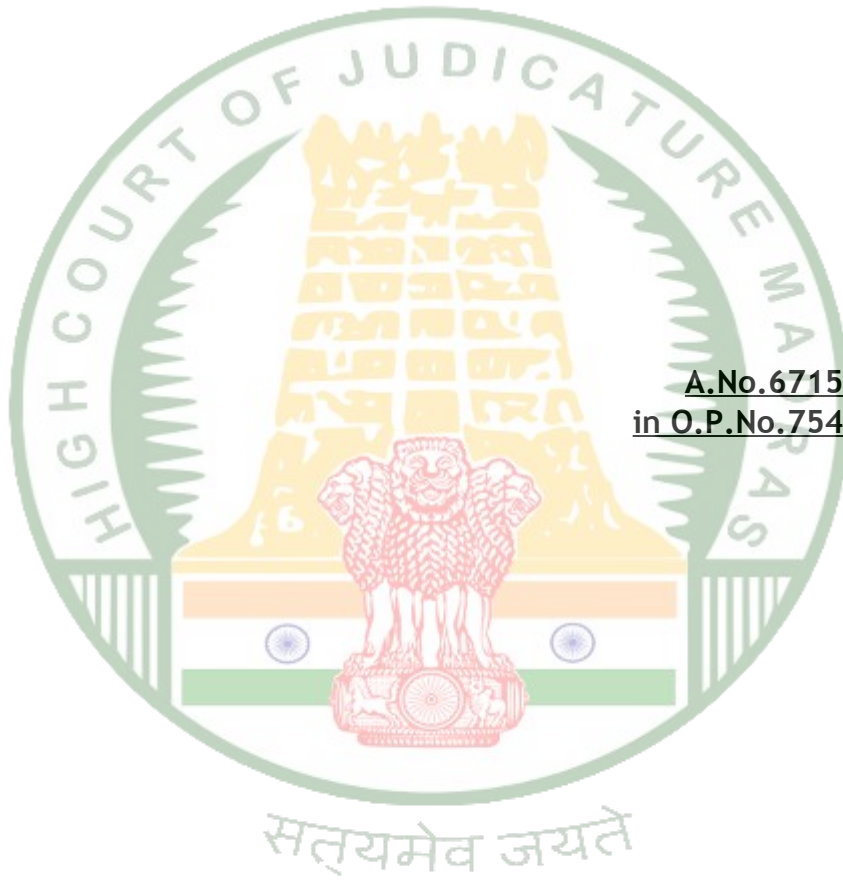
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