

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

A.No.9007 of 2019

G.N.Pandian

... Applicant

Vs.

1.Mr.S.Vasudevan
Managing Director
M/s.Ozone Projects Private Ltd.
Ulsur Road
Bangalore

2. M/s.Ozone Projects Private Ltd.
No.63, G.N.Chetty Road
T.Nagar, Chennai – 600 017

3.Hon'ble Mr.Justice K.Venkataraman
Former Judge, Madras High Court
'L' Block, 125, 17th Street
East Anna Nagar, Chennai – 600 102

... Respondents

(3rd Respondent stands deleted vide this order dated 04.02.2020)

Application filed under Order XIV Rule 8 of O.S.Rules read with Section 29A of Arbitration and Conciliation Act, 1996 to extend the time limit for a further period of six (6) months in conducting Arbitration No.5 of 2018 as deems fit by this Court.

For Applicant : Mr.R.Karthikeyan
for Mr.R.Bharanidharan

For Respondents : Mr.R.Venkataraman,
of M/s.Tatva Legal for RR1 and 2

ORDER

Prefatory Note :

This matter is listed under the caption 'FOR BEING MENTIONED' today.

2 This matter was taken up in the presence of learned counsel on both sides.

3 After an order was pronounced on 03.12.2019, it was noticed that an inadvertent error had crept into the order, as it proceeded on the basis that instant application has been filed prior to notification of section 6 of 'The Arbitration and Conciliation (Amendment) Act, 2019 (Act No.33 of 2019)' (hereinafter referred to as '2019 second amendment Act' for the sake of brevity and convenience) on 30.08.2019, whereas instant application has been filed after coming into force of section 6 of 2019 second amendment Act, as the date of filing of instant application is 20.11.2019.

4 Therefore, the order passed on 03.12.2019 is recalled and the same shall stand replaced by the instant order. Learned counsel on both sides agreed to such a course being adopted. To be noted, there is no change in the ultimate outcome qua application on hand.

5 Having set out a prefatory note supra, this Court now proceeds to pass orders afresh in application on hand (A.No.9007 of 2019).

Fresh order which will now replace the recalled order dated 03.12.2019 :

6 Mr.R.Karthikeyan, learned counsel representing the counsel on record for applicant and Mr.R.Venkataraman of M/s.Tatva Legal Chennai (Law Firm) on behalf of Respondents 1 and 2 are before this Court.

7 To be noted, third respondent is a Hon'ble former Judge of this Court, who constitutes the Arbitral Tribunal, as a sole Arbitrator. Third respondent shall henceforth be referred to as 'said AT' ('AT' standing for 'Arbitral Tribunal') for the sake of convenience and clarity.

8 Claimant before said AT is the applicant herein. Respondents 1 and 2 before said AT are Respondents 1 and 2 respectively in instant application before this Court.

9 Considering the nature of instant application, said AT, which has been arrayed as third respondent, stands deleted. Learned counsel on both sides, i.e., counsel for applicant as well as counsel for respondents 1 and 2, undertake to communicate this order to Hon'ble former Judge, who constitutes said AT. Likewise, by way of a post script to this order, Registry is also being directed to communicate this order to Hon'ble former Judge of this Court, who constitutes said AT.

10 This Court now embarks upon the exercise of examining instant application on hand. According to Judges Summons, instant application has been filed under Section 29-A of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A & C Act' for brevity). At the hearing, learned counsel on both sides submit for the sake of clarity and specificity that instant application is under sub-section (5) read with sub-section (4) of Section 29-A of A & C Act.

11 Prayer in instant application is innocuous and there is no dispute or contestation as learned counsel on both sides submit in unison that extension of time by six months for said AT for passing arbitral award is essential. To be noted, the reasons as to why arbitral award could not be made within the statutorily prescribed 12 months and mutually agreed extended six months (18 months in all) have been articulated in the affidavit filed in support of instant application. Considering the consensus, it is not necessary to dilate on those details and suffice to say that the reasons for arbitral award not being made within 18 months is owing to reasons beyond the control of all concerned.

12 Notwithstanding the above said trajectory, this application raises an interesting legal point as it has been filed by taking the date of first sitting of said AT as the reckoning date for computing aforementioned 18 months.

13 Section 6 of 2019 second amendment Act, which came into force on and from 30.08.2019 owing to notification inter-alia of section 6 of 2019 second amendment Act, amends Section 29-A of A & C Act and Section 6 of 2019 second amendment Act reads as follows:

' 6.Amendment of section 29A.-In section 29A of the principal Act.-

(a) for sub-section (1), the following sub-section shall be substituted, namely.-

"(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."

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely.-

"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."

(underlining made by this Court to supply emphasis and highlight)

14 Sub-section (1) of Section 29-A of A & C Act as it stood prior to 30.08.2019 read as follows :

'29-A. Time-limit for arbitral award.-(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.- 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.'

Post 30.08.2019, i.e., post notification of section 6 of 2019 second amendment Act, it now reads as follows:

'29-A. 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.'

(underlining made by this Court to supply emphasis and highlight)

15 To be noted, date of filing of instant application is 20.11.2019 and therefore this date is post 30.08.2019.

16 This application seeking extension of time for said AT for passing arbitral award by six months has been filed taking 26.03.2018 (date of first sitting of said AT) as the reckoning date. Considering the language in which Section 29-A is couched (prior to as well as post 2019 second amendment Act), this Court has no doubt or hesitation in saying that taking first sitting of said AT as reckoning date (for computing 12 or 18 months) is plainly incorrect. A bare perusal of aforesaid sub-section (1) of Section 29-A and plain language thereof reveals that the reckoning date either way is not the date of first sitting of Arbitral Tribunal. It is the date on which the said AT

entered upon reference upto 29.08.2019 and it is the date of completion of pleadings within the meaning of Section 23(4) of A & C Act on and from 30.08.2019.

17 Before this Court proceeds further with instant application, it is necessary to mention that a question arose as to whether Sub-section (1) of Section 29-A as it stood prior to 30.08.2019 or as it stands today post 30.08.2019 owing to 2019 second amendment Act coming into force applies in the instant case. In this regard it was pointed out that A & C Act was earlier amended by way of a earlier Amending Act, namely 'The Arbitration and Conciliation (Amendment) Act, 2015 (Act No.3 of 2016)' which shall hereinafter be referred to as '2016 first amendment Act' for the sake of convenience and clarity. This 2016 first amendment Act was originally promulgated by way of an Ordinance dated 23.10.2015 and subsequently the 2016 first amendment Act took retrospective effect from the date of the Ordinance, namely 23.10.2015. Section 26 of 2016 first amendment Act reads as follows:

' 26. Act not to apply to pending arbitral proceedings

Nothing contained in this Act shall apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act, before the commencement of the Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.'

(underlining made by this Court to supply emphasis and highlight)

18 In the 2019 second amendment Act, instead of Section 26 of 2016 first amendment Act, Section 87 (with retrospective effect from 23.10.2015) was introduced in the parent Act, i.e., A & C Act by section 13 of 2019 second amendment Act. While section 26 of 2016 first amendment Act fell for consideration of Hon'ble Supreme Court in **Board of Control for Cricket in India Vs. Kochi Cricket Private Limited** reported in (2018) 6 SCC 287, this section 87 phenomenon was struck down by Hon'ble Supreme Court in **Hindustan Construction Company Limited Vs. Union of India** reported in 2019 SCC OnLine SC 1520. In any event, as instant application has been filed on 20.11.2019, which is after 23.10.2015 as well as 30.08.2019, it is not necessary to dilate or delve further into this aspect of the matter in instant order.

19 In this case, as already alluded to supra, if it is the date of arbitral tribunal entering upon reference, this court is informed that it can be safely inferred as March of 2018 (exact date is not available with specificity) and that if it is the date of completion of pleadings, it is 10.07.2018. In other words, it is certainly not 26.03.2018 which is the first date of sitting of said AT.

20 In this regard, the language in which sub-section (4) of Section 29-A is couched makes it clear that if the award is not made within the period specified in sub-section (1) and the extended period, the mandate of the

arbitrator will terminate and extension of time of said AT under sub-sections (4) and (5) of Section 29-A can be made either before or after expiry of the extended period of six months post original 12 months. In the instant case, this application has been filed post extended period of 6 months, the termination will stand saved by this extension order.

21 Notwithstanding the aforesaid position, both learned counsel by consent submit that it would be desirable to extend the time upto 03.06.2020.

22 This application is ordered extending the time limit for Hon'ble Arbitrator constituting said AT qua Arbitration No.5 of 2018 upto 03.06.2020 for making the award.

23 This application is ordered and disposed of on above terms. As already alluded to supra, both learned counsel undertake to communicate the contents of this order as well as a copy of this order to the Hon'ble Arbitrator.

04.02.2020

Index : Yes

Speaking order

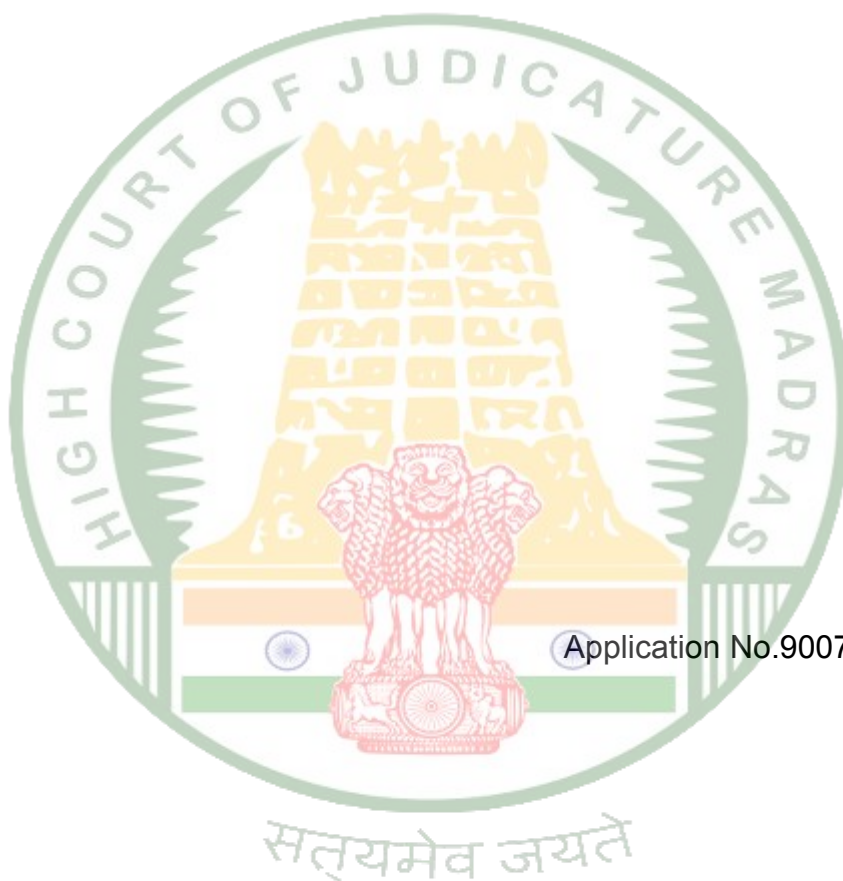
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Note: Registry is directed to send a copy of this order to the sole Arbitrator i.e., Hon'ble Mr.Justice K.Venkataraman, Former Judge, Madras High Court, 'L' Block, 125, 17th Street, East Anna Nagar, Chennai – 600 102.

A.No.9007 of 2019

M.SUNDAR.J.,

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