

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7350 of 2020

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The Bihar State Text Book Publishing Corporation Ltd. through its Managing Director, Pathya Pustak Bhawan, Budh Marg, Patna- 1.

... .. Petitioner/s

Versus

1. M/s Patna Offset Press, a registered partnership firm having its Registered office at Naya Tola, Near Dharahara Kothi, P.S.- Kadam Kuan, P.O.- Bankipore, District- Patna through one of its partners Shri Amit Kumar Singh, S/O Shri Ram Naresh Singh, Resident of Mohalla Naya Tola, Near Dharahara Kothi, P.S.- Kadam Kuan, P.O.- Bankipore, District- Patna.
2. Sri Amit Kumar Singh S/O Shri Ram Naresh Singh resident and partner of M/s Patna Offset Press, Registered Office at Naya Tola, Near Dharahara Kothi, P.S.- Kadam Kuan, P.O.- Bankipore, District- Patna
3. Smt. Supriti Singh W/O Sri Shailesh Kumar Singh resident and partner of M/s Patna Offset Press, Registered Office at Naya Tola, Near Dharahara Kothi, P.S.- Kadam Kuan, P.O.- Bankipore, District- Patna.
4. Mr. B.M. Patel, Ex- Managing Director, the Bihar State Text Book Publishing Corporation Ltd, BSNL, Quarter Type- V, A- IV- 40, Hardinge Road, Near Haj Bhawan, Patna- 15.
5. The Bihar Education Project Council through its State Project Director, Rashtra Bhasha Parishar, Saidpur, Rajendra Nagar, Patna- 800004.
6. The State Project Director, the Bihar Education Project Council, Rashtra Bhasha Parishar, Saidpur, Rajendra Nagar, Patna- 800004.
7. M/s Puja Printech Pvt. Ltd. Patliputra Industrial Estate, P.O. and P.S.- Patliputra, Patna- 13.
8. M/s Nav Bihar Media Pvt. Ltd. Patliputra Industrial Estate, P.O. and P.S.- Patliputra, Patna- 13.
9. The Chairman, the Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Budh Marg, Patna-1.
10. The Managing Director, the Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Budh Marg, Patna-1.
11. The Manager (Marketing and Sales), Sarva Shiksha, the Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Budh Marg, Patna-1.
12. The Internal Committee, the Bihar State Text Book Publishing Corporation Ltd., Pathya Pustak Bhawan, Budh Marg, Patna-1.

... .. Respondent/s

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Appearance:

For the Petitioner	:	Ms. Anukriti Jaipuriyar, Advocate
For the Resp. 1, 2 & 3	:	Mr. Binod Kumar Singh, Advocate
		Ms. Vagisha Pragyha Vacaknavi, Advocate
For the Resp. 7 & 8	:	Mr. Vikas Kumar, Advocate
For the Resp. 5 & 6	:	Mr. Girijesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date : 14-09-2020

This matter has been taken up for hearing through video conference. Learned counsel for the petitioner undertakes that all defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made, without delay immediately upon resumption of physical functioning of the Court, and in any event within one month thereof. Learned counsel for the respondents states that they have no objection in this regard and the matter be taken up on merits in view of the stated urgency.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition –

“(i) For issuance of writ(s), order(s) and direction(s) in the nature of writ of Certiorari to quash the order dated 04.07.2020 passed by the learned Arbitrator in Arbitration Case No. 10 of 2016, wherein and whereunder it has been held by the learned Arbitrator after becoming functus officio that the statutory mandate period under Section 29A of the Arbitration and Conciliation Act, 1996 has not expired and has directed the parties to pay the arbitral fees of Rs. 16,42,183/- by the next date along with list of issues to be framed;

(ii) For issuance of a writ in the nature of



mandamus directing the learned Arbitrator, Justice Chandra Mohan Prasad (Retd.) to revert back the case file as the mandate of the Arbitrator has expired due to expiry of statutory time period prescribed for completion of arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996, in the aforesaid case on 25th of September, 2019, i.e. 12 months after the date this arbitral tribunal has entered upon the reference -26th September, 2018;

(iii) For issuance of writ(s), order(s) and direction(s) in the nature of stay of the proceedings during the pendency of the present writ as the stage of the proceedings will change;

(iv) To grant any other relief or relief(s) to which the petitioner is found entitled to in the facts and circumstances of the case.”

3. Ms. Anukriti Jaipuriyar, learned counsel for the petitioner submits that by the impugned order, the learned Arbitrator has taken a view that his mandate has not expired, notwithstanding the provisions of Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) and has further directed the parties to pay the arbitral fee of Rs. 16,42,183/- along with list of issues to be framed.

4. At the present stage, learned counsel for the petitioner has pressed for interim orders staying further proceedings in the said arbitration case, pending detailed



hearing of this petition, inasmuch as the learned Arbitrator is insisting upon proceeding with the hearing of the arbitration case. Such interim relief is being sought mainly on the following grounds –

(i) The learned Arbitrator has lost his mandate through efflux of time by dint of the provisions of Section 29A of the Act, which lays down a limitation of 12 months for making the final award reckoned from the date when the Arbitral Tribunal entered upon the reference, namely on 26.09.2018. Even if the amendment to Section 29A by the Arbitration and Conciliation (Amendment) Act, 2019 be taken as applicable for the moment, the award had to be prepared within 12 months from the date of completion of pleadings, namely on 13.01.2019. It is therefore, submitted that in terms of Section 29A of the Act, no award could have been passed and the learned Arbitrator lost his mandate on 25.09.2019 or in the alternative, on 12.01.2020 and the question of proceeding further in the matter does not arise in the absence of extension of time by the parties or by the Court, as provided in Section 29A(4) of the Act.

(ii) In Misc. (Arbitration) Case No. 31/2019 filed under Section 14 read with Section 34 of the Act, the petitioner also filed a petition under Section 9 of the Act. The learned Court by order dated 27.03.2019 granted stay of further



proceedings of the learned Arbitrator till final disposal of the petition under Section 14 of the Act (Annexure-P/8).

Despite such stay order dated 27.03.2019 having been specifically brought to the notice of learned Arbitrator as evident from his order dated 01.04.2019, he continued to fix meetings and pass orders on various dates thereafter, such as on 22.07.2019, 03.08.2019, 19.10.2019, 14.12.2019, 11.01.2020 and 08.02.2020 (Annexure-P/9). The petitioner did not appear on these dates in the spirit of the order of the Hon'ble Supreme Court dated 12.10.2018 passed in *Transfer Petition (Criminal) No. 494 of 2018* in the case of *Sapna Arora vs The State of Punjab* (Annexure-P/14), *inter alia*, observing as follows –

“The learned counsel for the petitioner submits that despite the stay granted by this Court, the trial court is insisting for the presence of the parties. We fail to understand the logic behind such a practice, if the submission of the learned counsel is correct.

We make it clear that since the proceedings are stayed, there is no need for the parties to be in Court till the stay is vacated or modified by the Court, which granted the stay.”

Subsequently the stay order dated 27.03.2019 was challenged before this Court in M.A. No. 301 of 2019. This Court by its order dated 14.02.2020 (Annexure-P/10), quashed the stay order dated 27.03.2019 and remanded the matter to the learned District Court to re-hear the stay



petition. At the same time, it was held that the petition filed under Section 14 of the Act was maintainable and the Court below was directed to decide Misc. (Arbitration) Case No. 31/2019 within three months. Owing to the advent of the Covid-19 pandemic soon thereafter, no final order could be passed in the Misc. (Arbitration) Case No. 31/2019 which remains pending.

Learned counsel for the petitioner submits that even prior to the stay order being quashed by this Court in its order dated 14.02.2020, the learned Arbitrator has lost his mandate on 25.09.2019/12.01.2020 as above. The learned Arbitrator has taken a view that the entire period between 27.03.2019 (stay order passed) through 14.02.2020 (stay order quashed by this Court) and up to 26.06.2020 (a copy of the order of this Court dated 14.02.2020 furnished by the claimant before him) would be excluded while computing the period of 12 months for passing the final award. It is submitted that such stand of the learned Arbitrator is wholly unsustainable inasmuch as during the operation of the stay order, he had continued to conduct the meetings and passed orders from time to time. Moreover, the order of this Court dated 14.02.2020 was passed well after the mandate of the learned Arbitrator has expired/ended on 12.01.2020 and all his actions thereafter were non-est as he had become *functus*



officio.

(iii) This Court has held the petition under Section 14 of the Act filed by the petitioner to be maintainable and has directed the same to be decided by the learned Court below. As such, the learned Arbitrator is acting in undue haste in proceeding further in the matter and his actions are likely to defeat and preempt the very purpose of the petition under Section 14 questioning his mandate.

(iv) The repeated orders of the learned Arbitrator insisting upon physical hearing on the dates fixed as also for filing of hard copies of petitions during these times of Covid-19 pandemic and lockdown are in the teeth of orders of the Hon'ble Supreme Court in *Suo Motu Writ (Civil) No. 5 of 2020 in Re: Guidelines For Court Functioning Through Video Conferencing During Covid-19 Pandemic*, the order dated 15.03.2020 of this Court in CWJC No. 5633 of 2020, and the restrictions imposed by the State Government during the State Lockdown. In particular, the Hon'ble Apex Court in the above matter has observed as follows –

“Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-



mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date."

(v) Appointment of Arbitrator by the Writ Court under Article 226 of the Constitution of India in terms of the order dated 21.12.2018 passed in *CWJC No. 23694 of 2018 (M/s Sudama Mal vs. The Union of India and Ors.)* cannot be said to be valid as being contrary to the spirit of the judgment of the Hon'ble Supreme Court in *Duro Felguera S.A. vs. Gangavaram Port Limited, (2017) 9 SCC 729* and *National Insurance Company Limited vs. Boghara Polyfab Private Limited, (2009) 1 SCC 267*.

(vi) The Hon'ble the Chief Justice in exercise of power under Section 11(6) of the Act in *Request Case No. 48 of 2019 (M/s Sudama Mal vs. The Union of India and Ors.)* has categorically held in his order dated 26.07.2019 that the writ petition in CWJC No. 23694 of 2018, which was disposed of by appointing an Arbitrator was itself not maintainable for such relief and the interim exercise was *coram non-judice*, keeping in view of the provisions of Section 11(6) of the Act. In the instant case as well, the appointment of the Arbitrator as made by the learned



Writ Court in CWJC No. 9143 of 2016, is equally a case of *coram non-judice*.

5. Mr. Girijesh Kumar, learned counsel appearing for the Respondent No. 5 and 6 as well as Mr. Vikas Kumar, learned counsel for the Respondent No. 7 and 8 have both supported the contentions of the petitioner. It is stated that the Respondent No. 7 had filed a petition on 29.06.2020 raising objection to the mandate of the learned Arbitrator on the ground that such mandate had terminated, but the same was rejected by him.

6. Mr. Binod Kumar Singh learned counsel appearing on behalf of the Respondent No. 1, 2 and 3 has raised a preliminary objection with regard to non-maintainability of the present petition under Article 227 of the Constitution of India. For the purpose, he relies extensively on a judgment dated 20.04.2020 of the Hon'ble High Court of Gujarat in *R/Special Civil Application No. 4524 of 2019 (GTPL Hathway Ltd. vs. Strategic Marketing Pvt. Ltd.* in which various decisions of the Hon'ble Supreme Court has been considered for concluding as follows –

“14. The High Courts of Bombay, Allahabad and Patna have held the writ remedy to be available only for the reason of no other remedy being available to a party aggrieved from an order under Section 25(a). The Patna High Court however held that, notwithstanding the arbitral proceedings having been closed, the remedy of approaching the arbitral tribunal is available and further held the arbitral tribunal, upon being satisfied with the sufficiency of the cause for



default given, is empowered to set aside the dismissal in default. It was however not considered that if such remedy of approaching the tribunal is available, the remedy could not be justified on the ground of 'no remedy'.

15. The first question which thus according to us needs to be answered is, whether the remedy of approaching the arbitral tribunal for review/recall of termination of proceedings is available, inasmuch as the only consideration which has prevailed in the judgements aforesaid for holding the writ remedy to be available is that a party cannot be left remediless. If the remedy of approaching the arbitral tribunal is available, the said reasoning would disappear."

It was therefore held that the order passed during the course of arbitration cannot be challenged under Article 226 and/or 227 of the Constitution of India and the writ petition was accordingly dismissed.

7. On the question of applicability of Section 29A of the Act as amended in 2019, learned counsel for the respondent nos. 1, 2 and 3 has relied on a decision of the Hon'ble Delhi High Court dated 21.07.2019 passed in *OMP(MISC)(COMM) 256/2019, I.A. 4989/2020 (ONGC Petro Additions Limited vs. Ferns Construction Co. Inc.)*, wherein upon consideration of various decisions including *Shapoorji Pallonji and Co. Pvt. Ltd. vs. Jindal India Thermal Power Limited, O.M.P. (MISC)(COMM) 512/2019* (being relied upon by the respondent nos. 1, 2 and 3 herein) and *MBL Infrastructures Ltd. vs. Rites Ltd., O.M.P. (MISC.)(COMM) 56/2020* (being relied upon by the petitioner herein), it was held as follows –



“In view of my above discussion, it must be held that the provisions of Section 29A(1) shall be applicable to all pending arbitrations seated in India as on August, 30, 2019 and commenced after October 23, 2015.”

It is therefore submitted that the provisions of Section 29A as amended by the Amendment Act of 2019 would apply in the present case, inasmuch as the said provision came into effect on 30.08.2019 and admittedly the mandate of the learned Arbitrator was continuing on that date and would have come to an end subsequently on 25.09.2019 on the expiry of 12 months from the date when the learned Arbitrator entered upon the reference, on the basis of the provision as it stood prior to said amendment. The limitation for making the award thus stood extended by reason of Amendment Act, 2019 to a period of 12 months from the date of completion of pleadings. In the present case, it is submitted that the respondent no. 7 has filed his statement of defence along with issues as recently as on 25.08.2020 and as such there is sufficient time available with the learned Arbitrator for making the award.

8. It is further submitted by the respondent nos. 1, 2 and 3 that having regard to the provisions of Section 43 of the Act read with Section 15 of the Limitation Act, 1953, the period during which the stay order dated 27.03.2019 was in operation must stand excluded for the purpose of



computation of limitation for making the award. The said order remained in force until the same was quashed by this Court on 14.02.2020 and as such the period of about 354 days must be excluded, otherwise, it will bring about a incongruous situation whereby, on the one hand, the petitioner has obtained an ex-parte stay order on 27.03.2019 which was ultimately found by this Court to be illegal on the ground of violation of natural justice and was accordingly quashed, while on the other, it is sought to be contended that time continued to run for purposes of limitation even during the stay period. The submission of the petitioner that the learned Arbitrator, notwithstanding the stay order being in operation, has continued to proceed with the arbitration and passed orders, must be taken in its correct perspective inasmuch as the learned Arbitrator has not proceeded to examine the evidences or passed any effective orders during the stay period. Such dates were fixed from time to time mainly to assess the situation and feasibility of proceeding with the hearing in the backdrop of Covid-19 pandemic. The learned Arbitrator even required the petitioner to make arrangement for video conferencing and to be part of the arbitral proceeding, but the petitioner did not make any attempt for arranging any facility for video conferencing nor physically participated.



9. Learned counsel for the respondent nos. 1, 2 and 3 has further contended that the order of stay dated 27.03.2019 has been obtained by the petitioner illegally, inasmuch as Section 9(1) of the Act which provides for interim measures etc. by Court contemplates interim relief only in relation to the matters enumerated therein, such as appointment of guardian, preservation, interim custody or sale of goods comprising subject matter of the arbitration agreement. It is submitted that such powers of the Court do not extend to grant of stay of the arbitral proceeding itself, as done in the present case.

10. The submission of the petitioner that the appointment of Arbitrator by the learned Writ Court was *coram non-judice* cannot be considered at this stage having not been raised by the petitioner before the learned Court below at any stage. Moreover, the challenge to the mandate of the Arbitrator has also been raised by the petitioner in its petition under Section 14 of the Act, admittedly pending before the learned Court below. The present petition thus amounts to parallel proceeding by the petitioner for similar relief which cannot be allowed. The only available option with the petitioner is to await disposal of its petition under Section 14 of the Act or await final award, which may be made subject matter of an application under Section 34 of the Act or an appeal under



Section 37 of the Act. Reliance is placed for this proposition on the case of *M/s SBP and Co. vs. M/s Patel Engineering Ltd and Anr.*, (2005) 8 SCC 618, in which it was held as follows –

“The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

11. In reply, learned counsel for the petitioner has submitted as follows –

(i) As far as non-maintainability of the present writ petition under Article 226 of the Constitution of India is concerned, it is submitted that the same is maintainable and the submission of respondent nos. 1, 2 and 3 to the contrary is based on a misreading of the judgment of the Gujarat High Court in *GTPL Hathway's case (supra)*. It is pointed out that the foundational facts in the said judgment were completely different from the instant one inasmuch as the appointment of Arbitrator was made by the Hon'ble Gujarat High Court in a petition under Section 11 of the Act. The same situation obtained in the other decisions of the Hon'ble Supreme Court referred to by respondent nos. 1, 2 and 3 in *M/s SBP and Co.*



case (supra) and M/s Deep Industries Limited vs. Oil and Natural Gas Corporation (Civil Appeal No. 9106 of 2019), whereas in the present case, the appointment of Arbitrator in a writ petition was *coram non-judice*. It is in this backdrop that the Hon'ble Supreme Court in *M/s SBP and Co. case (supra)* discouraged judicial intervention under Article 227 of the Constitution and directed that the parties would have to wait until the award is pronounced, unless a right of appeal became available under Section 37 of the Act even at an earlier stage. It is submitted however that such procedure can be applied only on the pre-condition that the forum of arbitration has been validly constituted under Section 11 of the Act. This contention finds support from a recent decision of the Hon'ble High Court of Gauhati in the case of *Raj International vs. Tripura Jute Mills Ltd., 2008 SCC Online Gau 333*. It is by now well settled that where a forum is not vested with jurisdiction under a statute, jurisdiction cannot be conferred on the forum by agreement of parties or by a superior Court.

(ii) Even for the moment assuming that Section 29A as amended by the Amendment Act of 2019 was applicable, the mandate of the learned Arbitrator had already terminated on 25.03.2020. A perusal of the amended Section 29A of the Act reveals that a time limit of 12 months for making the award



has been stipulated with reference to date of completion of pleadings under Section 23(4) of the Act, which in turn, as amended by the same Amendment Act of 2019, contemplates that the settlement of claim and evidence shall be completed within a period of six months from the date the learned Arbitrator received written notice of his appointment. In the present case, admittedly, the learned Arbitrator entered upon reference on 26.09.2018 and thus the six months period for completion of pleadings expired on 25.03.2019. The stay order dated 27.03.2019 would therefore not have any bearing for this purpose. Thereafter, the period of 12 months for making the award expired on 24.03.2020.

(iii) For the same reason, the reliance on Section 43 of the Act read with Section 15 of the Limitation Act does not come to the rescue of respondent nos. 1, 2 and 3.

12. In course of hearing of the matter primarily for the purpose of consideration of the petitioner's prayer for interim relief, extensive submissions have been made on behalf of the parties on merits as noticed above with a request that the matter be finally decided on merits.

13. Having heard the parties and on consideration of the materials on record, I find considerable merit in the submissions of the petitioner.

14. On the preliminary question of maintainability of the



present petition under Article 227 of the Constitution of India, it is relevant to note that the judgments of the Hon'ble Apex Court in *M/s SBP and Co. case (supra)*, *M/s Deep Industries Limited case (supra)* and that of Hon'ble Gujarat High Court in *GTPL Hathway Ltd (supra)* have all been decided in the backdrop appointment of the learned Arbitrator having been made under the provisions of Section 11 of the Act, which is a complete code in itself. It is for this reason that judicial interference under Article 226 and/or Article 227 of the Constitution of India has been discouraged. These decisions are therefore distinguishable as in the instant case the appointment of Arbitrator has not been made under Section 11 of the Act, but by a Writ Court. It has been argued by the petitioner that such appointment is *coram non-judice* as held by this Court in *Request Case No. 48 of 2019 (M/s Sudama Mal vs. The Union of India and Ors.)*. An application under Article 227 of the Constitution would therefore be maintainable to enable this Court to satisfy itself whether or not the arbitral tribunal has acted within the bounds of its authority.

15. It is relevant at this stage to notice the substitution of Section 29A(1) as well as the insertion of Section 23(4) brought about by the Amendment Act of 2019 with effect from 30.08.2019 by Gazette Notification in S.O. 3154(E) —



Section 29A(1) as it stood prior to amendment –

29A. (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.

Section 29A(1) after amendment –

“(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.”;

Section 23(4) inserted –

“(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.”.

16. It is also necessary to notice a few of the relevant dates having a bearing on the issue of termination of the mandate of the learned Arbitrator –

26.09.2018 – Arbitrator entered upon the reference

25.03.2019 – Expiry of time for completion of pleadings under Section 23(4) of the Act

30.08.2019 – Substitution of Section 29A(1) by Amendment Act of 2019

25.09.2019 – Expiry of 12 months for making the award reckoned from the date when the Arbitrator entered upon the reference

24.03.2020 – Expiry of 12 months for making the award reckoned from the last date for completion of pleadings



17. Section 29A prescribes the time limit for making the arbitral award. It is significant to take note of sub section (3) of Section 29A, which provides that the parties may by consent, extend the period specified in sub section (1) for making the award for a further period not exceeding six months. Sub section (4) of Section 29A categorically provides that if the award is not made within the period prescribed under sub section (1) or the extended period specified under sub section (3), the mandate of the Arbitrator shall terminate, unless the Court has extended the period.

18. It therefore becomes evident upon reading Section 29A as a whole that the time limit for making the award under Section 29A(1) is inflexible and the only provisions for extension are given in sub sections (3) and (4) referred to above. It is not the case of any of the parties that time for making the award was extended either by consent of the parties under sub section (3), or by the Court under sub section (4). In these circumstances therefore, the last date for making the award under the pre-amended sub section had expired on 25.09.2019. If the amended provision is applied, even then the last date for making the award expired on 24.03.2020. Having regard to the provisions of Section 29A, therefore, there appears little reason to take a view that the stringent mandatory provision prescribing time limit under



sub section (1) can be treated as automatically extended merely on the strength of the stay order dated 27.03.2019 passed by the learned Court. The contention of the respondent nos. 1, 2 and 3 to the contrary does not prima-facie appear to be tenable.

19. Several contentious issues arise in this case with regard to whether the appointment of Arbitrator by a Writ Court was valid or *coram non-judice* and whether this aspect can be agitated in collateral proceedings. That apart, the question of retrospective operation of Section 29A of the Act, as amended by the Amendment Act of 2019, also requires to be considered and so also the exclusion of time during the operation of the order dated 27.03.2019 passed by the learned Court for purposes of calculation of limitation for making the award.

20. Admittedly, the petitioner has filed a petition under Section 14 of the Act challenging the mandate of the learned Arbitrator seeking his substitution in the backdrop of perceived partiality on his part – such apprehension arising from his act of authorising the claimant-respondents to issue notices on his behalf on their counsel's letterhead to the petitioner to appear; allowing the claimant-respondents to modify their claim midway through the proceeding from Rs. 6,90,72,474.69/- to Rs. 11,95,36,707/- by submitting



calculation made up to a future date; and certain adverse and prejudicial remarks allegedly made by him on the very first day, without even hearing the case of the petitioner – which has been registered as Misc. (Arbitration) Case No. 31 of 2019. In the said case the petitioner also filed a petition under Section 9 of the Act for interim measure, which was allowed *ex-parte* by the learned Court in its order dated 27.03.2019 directing stay of arbitral proceedings. Such order dated 27.03.2019 was made subject matter of challenge in M.A. No. 301 of 2019 before this Court. While disposing of the same, this Court in its judgment dated 14.02.2020 (Annexure-P/10) held in para 19 of the judgment that the petition under Section 14 of the Act giving rise to Misc. (Arbitration) Case No. 31 of 2019 is maintainable and directed the learned Court to dispose of the same within three months from the date of receipt/production of a copy of the said judgment. The petition under Section 9 of the Act was quashed with a direction to the learned Court below to pass fresh orders after grant of opportunity to the parties.

21. In this view of the matter and considering the aforesaid direction of this Court in M.A. No. 301 of 2019 wherein the learned Court below has been directed to dispose of the petition under Section 14 of the Act, I am not inclined to finally decide the issues on merit. It appears that the matter is



still pending and could not be concluded within the stipulated time of three months by reason of the ongoing Covid-19 pandemic. In the interest of justice, therefore, I direct that the petitioner shall be at liberty to raise the aforesaid contentions by approaching the learned Court below in Misc. (Arbitration) Case No. 31 of 2019. If the petitioner files an appropriate petition for this purpose before the learned Court below within a period of three weeks hereof, the same shall also be considered and disposed of on its merits in accordance with law.

22. I am also mindful that this Court has quashed the stay order dated 27.03.2019 passed on the petitioner's application under Section 9 of the Act with directions to pass fresh orders thereon after grant of opportunity of hearing to the parties. In this regard, learned counsel for the respondent nos. 1, 2 and 3 has contended that the learned Court below has acted beyond jurisdiction in granting stay of the arbitral proceeding itself, inasmuch as such interim measure is not contemplated under Section 9 of the Act. On the other hand, considering the nature of issues raised in this petition which go to the root of matter of jurisdiction in the arbitral proceeding, grave prejudice may be caused if the arbitration proceeding is permitted to continue and final award passed, pending disposal of the petitions by the learned Court.



23. Accordingly, in exercise of powers under Article 227 of the Constitution of India and in the interest of justice, I direct that the learned Court below shall endeavour to dispose of the petition under Section 14 of the Act filed by the petitioner in Misc. (Arbitration) Case No. 31 of 2019 as expeditiously as possible, subject to the period of three weeks granted to the petitioner for filing an appropriate petition as aforesaid. Until such disposal, further proceedings before the learned Arbitrator shall remain stayed.

24. The petition stands disposed of with the aforesaid observations and directions.

25. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	AFR
CAV DATE	-
Uploading Date	14.09.2020
Transmission Date	-

