

A.No.9880 of 2019
in O.P.No.58 of 2017

M.SUNDAR,J.

Mr.S.Satish, learned counsel for applicant and Mr.V.Kuberan of M/s. Rank Associates, learned counsel for respondent are before this Court. This is a consent order and therefore, it is not necessary to embark upon the exercise of setting out facts in detail. Suffice to say that a three member Arbitral Tribunal was constituted vide order dated 10.03.2017, made in O.P. No.58 of 2017 by this Court. Though obvious, for the purpose of clarity, two Hon'ble Arbitrators were appointed vide Court order and those two Hon'ble Arbitrators had appointed the third arbitrator who shall act as the Presiding Arbitrator. Demise of one of the three Hon'ble Arbitrators necessitated the filing of O.P.No.1071 of 2019, which has been disposed of today (02.01.2020) vide separate order. Read this in conjunction with and in continuation of the said order which reads as follows:

'Mr.S.Satish, learned counsel on record for petitioner and Mr.V.Kuberan of Rank Associates (law firm) on behalf of sole respondent are before this Court.

2. Instant 'Original Petition' (hereinafter referred to as 'OP' for the sake of brevity) has been filed under section 15(2) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, clarity and convenience).

3. *Instant OP is one essentially for substituting one of the three Hon'ble Arbitrators who constitute a three member Arbitral Tribunal qua arbitral disputes between the petitioner and the respondent.*

4. *As there is no disputation or contestation as between the parties, disposal of instant OP has become fairly simple. Therefore, it is also not necessary to dilate on facts.*

5. *Suffice to state that the three member Arbitral Tribunal was appointed by this Court in exercise of its powers under Section 11 of A and C Act, vide order dated 10.03.2017 made in O.P. No.58 of 2017. Though obvious, for the purpose of clarity, it is made clear that two arbitrators were nominated and they in turn chose the presiding arbitrator.*

6. *Three member Arbitral Tribunal thus constituted is as follows:*

Hon'ble Justice (Retd.) Mr.Vikas Sirpurkar, former Judge of the Hon'ble Supreme Court of India, Hon'ble Justice (Retd.) Mr.Dilip Rao Saheb and Hon'ble Justice (Retd.) Mr.N.V.Balasubramanian.

7. *Unfortunate demise of one of the three Hon'ble Arbitrators namely, Mr.N.V.Balasubramanian on 03.11.2019 has necessitated the filing of instant OP. This Court is also informed that there is another legal aspect*

which has necessitated the filing of instant OP. That legal aspect is the principle laid down by the Hon'ble Calcutta High Court in **Ramjee Power Constructions Limited Vs. Damodar Valley Corporation** reported in **MANU/WB/1306/2009**. Ramjee power constructions principle is to the effect that once an application under Section 11 of A and C Act is made, the right of the other party to appoint the Arbitrator in accordance with the A and C Act gets extinguished and it does not revive if the arbitrator or one of the arbitrators is either unable to continue or when his mandate is terminated. In view of there being no disputation or contestation between the parties as alluded to supra, it is not necessary to dilate any further on this aspect of the matter.

8. With regard to substituting the aforementioned Hon'ble Arbitrator who is no more, name of Hon'ble Mrs.Justice Chitra Venkataraman (Retd.), Former Judge of this Court was suggested by the respondent counsel and the petitioner counsel on instructions submitted that the suggestion is not opposed.

9. Therefore, Hon'ble Mrs.Justice Chitra Venkataraman (Retd.) Former Judge of this Court is appointed as Arbitrator who will substitute Late Hon'ble Justice Mr.N.V.Balasubramanian (Retd.) qua the Arbitral Tribunal appointed vide order dated 10.03.2017 made in O.P. No.58 of 2017.

10. The three member Arbitral Tribunal now

reconstituted vide this substitution order is requested to embark upon the exercise of continuing and concluding the Arbitral proceedings by passing an award in accordance with the A and C Act. This petition is thus disposed of. There shall be no order as to costs'.

2. Instant application has been filed under Section 29-A (4) of 'The Arbitration and Conciliation Act, 1996' (hereinafter referred to as 'A and C Act' for the sake of brevity) with a prayer for extending the period for making the award.

3. This Court is informed that there were multiple extensions of time earlier by different orders made by this Court. In the light of this being a consent order, it is not necessary to dilate qua those details. Suffice to state that this Court is informed that the last extension was vide order dated 30.08.2019 and the extended three months time period elapsed on 12.12.2019 necessitating instant petition.

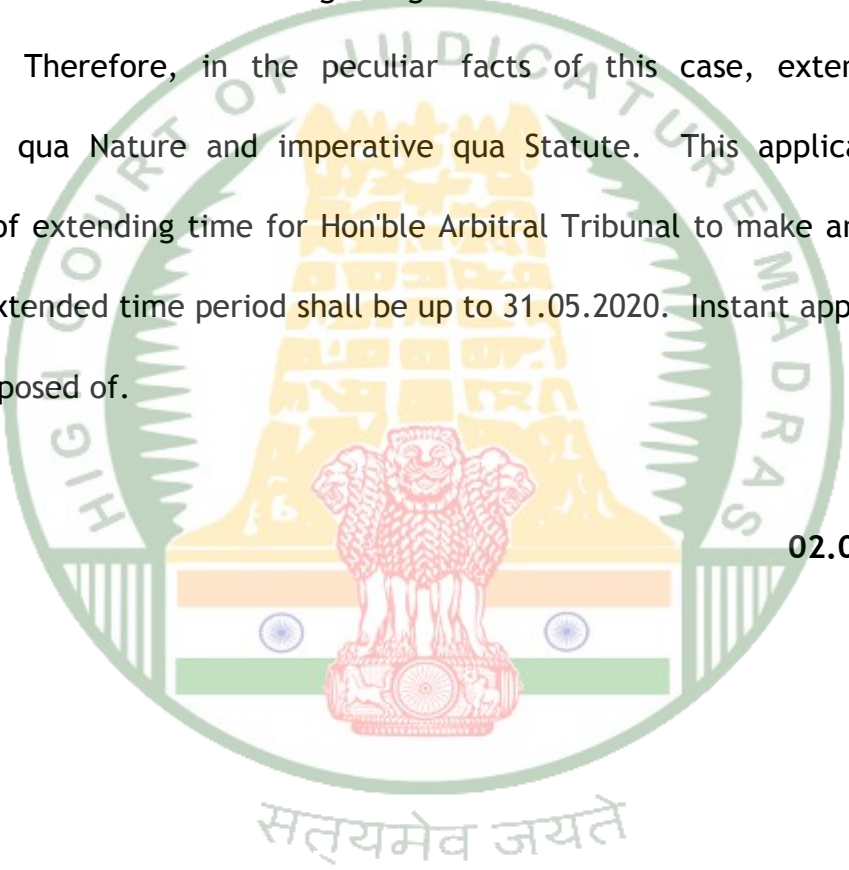
4. This Court is informed that multiple extensions became inevitable owing to one of the counsel being hospitalised/indisposed followed by hospitalisation of one of the Hon'ble arbitrators. With regard to instant application also, this Court is informed that one of the arbitrators has also undergone medical procedure in America and he is convalescing there. This Court is informed that he is scheduled to return to India in the

last week of February. On this basis, three months extension of time computed from first of March 2020, is sought for.

5. To be noted, there was also unfortunate demise of one of the Hon'ble Arbitrators necessitating filing of O.P.No.1071 of 2019 and orders thereon. Therefore, in the peculiar facts of this case, extension is inevitable qua Nature and imperative qua Statute. This application is disposed of extending time for Hon'ble Arbitral Tribunal to make an award and the extended time period shall be up to 31.05.2020. Instant application is thus disposed of.

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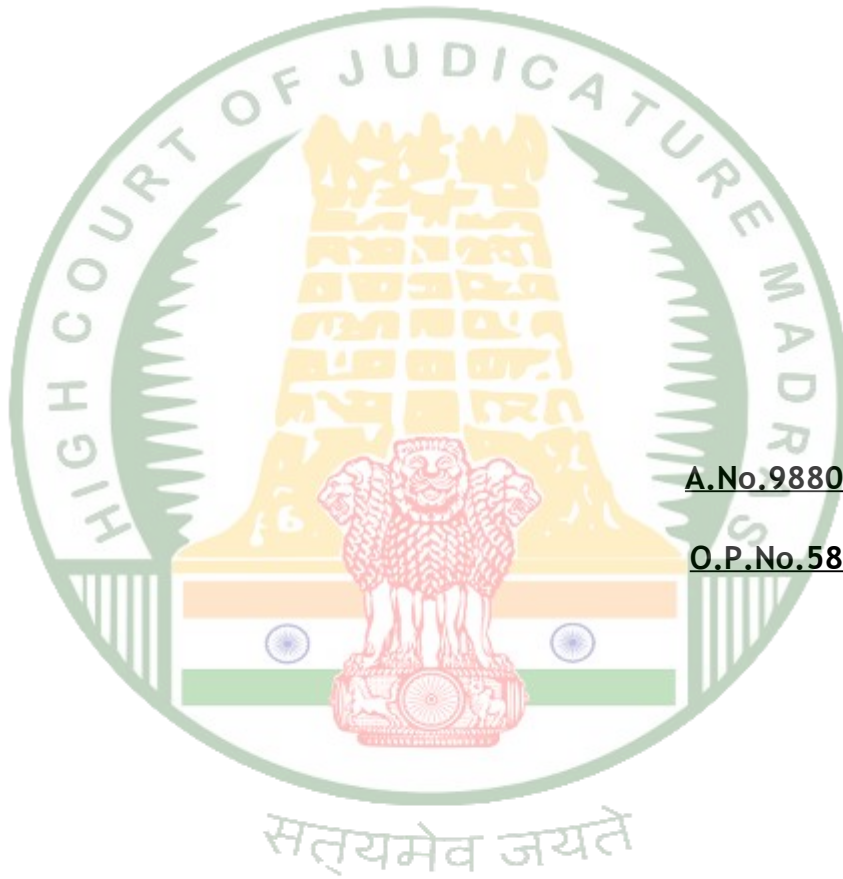


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