

A.No.2799 of 2020

P.T.ASHA, J.

The above application is filed for extending the mandate of the Arbitrator by a further period of six months.

2. The application is taken out by the claimant. It is the case of the claimant that the Arbitrator had entered reference on 23.03.2018 and the mandate was to expire on 22.03.2019 . It is the case of the claimant that on 01.03.2019, the matter was posted for continuation of cross examination of the claimant's witness and on the very same day, the applicant had filed a memo giving their consent for extending the mandate of the Arbitral Tribunal. However the respondents did not give their consent and therefore the present application had been filed.

3. Since the present application had been filed only in the month of October 2020 and there was no explanation for the period 01.03.2019 till

October 2020, the applicant had filed an additional affidavit giving the reasons for the delay. It is their case that during April 2019, the applicant's office was shifted to 21, Patullos Road, Chennai -600 002 to Whites Road, Chennai - 600 014 for renovation and while shifting office, all the papers stored together in a cramped place, by reason of which, the papers relating to the present proceedings and other proceedings had been misplaced. Also the witness who had got married on 17.02.2019 had availed his LTC from April 2019 and resumed office only in May 2019. After the renovation work, the applicant's office was shifted back to its original work place and he would state that despite their diligent search, the papers relating to the present proceedings could not be traced out and only in the first week of March 2020, they had managed to trace out the same. In view of Pandemic, nothing could be done and since the lockdown had been lifted, the applicant had come out with the present application.

4. The learned counsel appearing for the applicant would submit that they had been diligent in prosecuting the Arbitration proceedings as well as

the present application and that the memo for extending the mandate of the Arbitral Tribunal had been filed much before the period had come to an end and it is the respondents who have not given consent for the extension. Though the second respondent had extensively cross examined CW1, the cross examination of CW1 is yet to be concluded. Further he would submit that the respondent has also filed a counter claim and therefore it would be in the interest of parties to have the mandate extended. He would further submit that the present counsel is the 3rd of the counsels who has appeared on behalf of the respondents which has also contributed to the delay in the conclusion of the Arbitral proceedings. He would therefore submit that taking into account the fact that the proceedings are at the stage of cross examination interests of justice would be sub-served if the mandate of the Arbitrator is extended.

5. Per contra, Mr. K. Shakespeare, learned counsel appearing on behalf of the respondents would submit that the reason given in the affidavit regarding the shifting of office is made only with the intent of bringing out

assemblance of reason for over coming the delay. The counsel has vehemently objected to the said application stating that the reasons given are moon shine and no credible reasons have been given for the deliberate and wanton delay. He would refer to the evidence of CW1 where he had admitted that the office of the applicant is at Perungudi where the records are deposited. The counsel would therefore contend that the averments in the affidavit that records were misplaced on account of the shifting from 21, Patulllos Road, Chennai -600 002 to Whites Road, Chennai - 600 014 is only an afterthought. He would further submit that on 01.03.2019, the proceedings had been concluded and the Arbitrator had recorded that the future date of hearing would be intimated to the parties. The claimant/applicant has not taken any steps for over a period of 1 and half years and therefore the extension cannot be granted.

6. Heard the counsels and perused the records.

7. From the records, it is evident that the second respondent herein has cross examined the witness of the claimant (CW1) on 02.02.2019 and 01.03.2019 extensively. The records would show that nearly 191 question have been asked. It is also seen that on 01.03.2019, the applicant herein has filed a memo before the Arbitrator consenting for extending the mandate of the Arbitrator in keeping with the provisions to Section 29-A(3) of the Act. However, the respondents have not consented for the same though the memo has been filed much before the mandate of the Arbitrator had come to an end. The claimants have given an explanation for the delay in filing this application before this Court. I am convinced with the reasons that have been given for the delay.

8. Considering the fact that the case is at the stage of cross examination and extensive cross examination has been undertaken by the claimant, interests of justice require the mandate of the Arbitral Tribunal be

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extended and the mandate is extended for a further period of six months from the date of receipt of a copy of this order. No costs.

08.01.2021

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