

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
(Original Side)

A.P. No. 403 of 2022

Reserved on: 05.08.2022
Pronounced on: 26.08.2022

Jatin Satik

...Petitioner

-Vs-

Smt. Sanchita Bera

...Respondent

Present:-

Ms. Sreetama Neogi,
Mr. Joydeep Chatterjee,
Mr. Dipta Dipak Banerjee, Advocates
... for the applicant

Mr. P. Gupta,
Mr. Pijush Biswas,
Ms. Mandeep Kaur, Advocates
... for the respondent

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

Prakash Shrivastava, CJ:

1. This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed by the applicant for appointment of arbitrator to resolve dispute between the parties.

2. The plea taken in the application is that on 21.05.2014 the applicant had entered into an agreement with the respondent for purchase of a flat and out of the total consideration of Rs. 26,00,000/-, the applicant had paid the part consideration of Rs.13,50,000/-, thereafter dispute had arisen between the parties, therefore, applicant had moved to the competent Court for interim protection in terms of

the Section 9 of the Act being Misc. Case 143 of 2015 (Arb) and by order dated 03.06.2015 the competent Court had granted the interim protection which was extended from time to time and finally the interim order was vacated and the application under Section 9 was disposed of by order dated 15.02.2022. Applicant had sent the notice for appointment of arbitrator to the respondent on 08.02.2018 which was replied by the Counsel for the respondent on 16.02.2018 suggesting the names of two arbitrators. Since there was no consensus about the arbitrators, therefore, this application has been filed on 14.06.2022.

3. A preliminary objection has been raised by the learned Counsel for the respondent that the application has been filed after 3 years from the date cause of action arose and that limitation prescribed under Article 137 of the Limitation Act is applicable for filing an application under Section 11 of the Arbitration Act, therefore, after expiry of the said limitation, the application cannot be entertained.

4. Learned Counsel for the applicant has opposed the said preliminary objection.

5. I have heard the learned Counsel for the parties and perused the record.

6. Hon'ble Supreme Court in the matter of **Bharat Sanchar Nigam Limited and Another vs. Nortel Networks India Private Limited** reported in (2021) 5 SCC 738 has settled the distinction between the period of limitation for filing a petition seeking appointment of an arbitrator and the period of limitation applicable to the substantive claims made in the underlying contract. It has been held that the limitation for filing an application under Section 11(6) of

the Act commences from the date on which the agreement procedure for appointment of the arbitrator can be said to have failed in terms of Section 11 (6)(a),(b) or (c). It has further been held that the period of limitation will begin to run from the date, when there is failure to appoint the arbitrator i.e. from the date of refusal by the other side or upon the failure to make the appointment within the period stipulated in the notice invoking arbitration whichever is earlier. It has been further held that since there is no limitation prescribed in the Act of 1996 for filing an application under Section 11, therefore, residual provision contained in Article 137 of the Limitation Act will be applicable. Hon'ble Supreme Court in the matter of **Bharat Sanchar Nigam Limited and Another (supra)** in this regard has held that:

“15. It is now fairly well-settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.”

7. It has further been held that:

“19. The reasoning in all these judgments seems to be that since an application under Section 11 is to be filed in a court of law, and since no specific Article of the Limitation Act, 1963 applies, the residual Article would become applicable. The effect being that the period of limitation to file an application under Section 11 is 3 years from the date of refusal to appoint the arbitrator, or on expiry of 30 days, whichever is earlier.”

8. In the subsequent judgment in the matter of **Secunderabad Cantonment Board vs. B. Ramachandraiah and Sons** reported in **(2021) 5 SCC 705**, Hon'ble Supreme Court has reiterated that the limitation for filing application under Section 11(6) of the Act commences from the date on which agreement procedure for appointment of arbitrator can be said to have failed in terms of Section 11 (6)(a),(b) or (c). Hon'ble Supreme Court taking note of the earlier judgment on the point of that fact has held:

“19. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006. This demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007. The appellant's laconic letter dated 23-1-2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day. Obviously, once time has started running, any final rejection by the appellant by its letter dated 10-11-2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2010. On this count, the applications under Section 11 of the Arbitration Act,

themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court.”

9. Examining the present case in the light of the above position of law, I find that the applicant had sent the notice dated 08.02.2018 proposing the name of Shri Bhaskar Ray for appointment of aribitrator. This notice was replied by the respondent on 16.02.2018 suggesting the name of two arbitrators instead of one. Hence, there was no consensus in respect of names and number of arbitrators. The 30 days period from 08.02.2018 i.e. date of notice by the applicant expired on 11.03.2018, therefore, limitation started running from that date and 3 years period from that date expired on 11.03.2021. In view of the order of the Hon’ble Supreme Court dated 10th of January, 2022, the applicant was entitled to extension of period of limitation upto 28.02.2022, because the limitation had expired between 15.03.2020 and 28.02.2022. In terms of the said order further 90 days period was also available from 01.03.2022. Hon’ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020* by order dated 10th of January, 2022 has held as under:

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

10. The 90 days period from 01.03.2022 expired on 01.06.2022 but the applicant had failed to file the application under Section 11(6)

of the Act within this period but has filed the present application on 14.06.2022 when the limitation had already expired.

11. Hence, in view of the judgment of the Hon'ble Supreme Court in the matter of **Bharat Sanchar Nigam Limited and Another (supra)** and **Secunderabad Cantonment Board (supra)** and also in view of the fact that the present application has been filed after expiry 3 years prescribed limitation period under Article 137 of the Limitation Act, I am of the opinion that A.P. 403 of 2022 is barred by time and is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Kolkata
26.08.2022

PA(SS)

(A.F.R./N.A.F.R.)