

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 371 OF 2019

Kishore Kantilal Maniar ... Applicant
vs.
Vilayatram Mittal and Anr. ... Respondents

Mr. Sanjeev Singh for the Applicant.
Mr. Chaitanya Bhandarkar for Respondents.

CORAM : A. K. MENON, J.
DATED : 17th JANUARY, 2022
[THROUGH VIDEO CONFERENCE]

P.C. :

1. Mr. Singh on behalf of the applicant submits that a Sole Arbitrator appointed by this court vide order dated 12th August, 2010 under section 11 of the Arbitration and Conciliation Act in Arbitration Application no. 226 of 2007 has expired. The Arbitrator entered the reference and after completing pleadings the tribunal commenced recording of evidence. In paragraph 16 of the present application the applicant has set out various dates when pleadings were completed and evidence was led. It is stated that the cross examination of the second witness could not be completed and the witness was then discharged. In the meanwhile the learned arbitrator expired in 2016.

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2. According to Mr. Singh the arbitrator expired in or around July/August, 2016 which caused the applicant to address a letter dated 15th September, 2016 to the respondent calling upon respondent to consent and appoint an arbitrator. In response to this request, the respondent vide its letter dated 21st September, 2016 addressed to the applicants Advocate, suggested an alternate name. In case the applicant did not accept the nominee sought to be made by the respondent and if the applicant insisted on appointing its nominee, a former Judge of this court, then the respondent would nominate a second arbitrator and the tribunal could consist of three arbitrators.

3. On behalf of the respondent Mr. Bhandarkar has opposed this application on the ground that it is barred by limitation. He relies upon judgment of this Court in *Deepdharshan Builders Pvt. Ltd. vs. Saroj, Widow of Satish Sunderrao Trasikar*¹ which holds that the period of limitation under Article 137 would apply and that period of three years would have to be computed from the date when the response of the respondent to the nominee by the applicant was delivered / served upon the applicants / their Advocates. Mr. Bhandarkar admits that notice of 15th September, 2016 suggesting a substitute arbitrator was received and that was responded to on 21st September, 2016 suggesting an alternative and also separately suggesting that the tribunal be reconstituted with tribunal of three arbitrators but there

1 (2019) 1 AIR Bom R 249

is nothing on record to show when the letter dated 21 September, 2016 was delivered to the applicants Advocate.

4. It also appears that further correspondence has ensued as evident from copy of letter dated 11th December, 2018 addressed by the respondent firm to the Applicants Advocate wherein reference is made to correspondence between the parties inter alia contending that a suit was pending in this court since the year 2007 and that the applicant had no right to invoke arbitration. The attempt therefore was to avoid the arbitration proceedings. What really clinches the issue is the fact that the respondent has in no uncertain terms suggested appointment of a nominee and in the alternative suggested that reference be made to a three member tribunal. Thus a new agreement was proposed by the respondent's letter of 15th September, 2016 but the agreement between the parties and as contained in clause 7 contemplated reference to a Sole Arbitrator. In these circumstances I am of the view that the opposition to the application is not justified. Firstly for the reason that Mr. Bhandarkar is unable to satisfy the court of the date his clients response dated 15th September, 2016 was delivered to the applicants/their Advocate. The present application though dated 23rd September, 2019 was lodged only on 9th October, 2019 but since there is no evidence of the date on which the respondents letter of 15th September, 2016 was delivered to the applicants Advocate and/or applicant on record, it appears that the date of commencement of limitation under Article 137 cannot be ascertained

5. On facts I find that an arbitrator was appointed in Arbitration Application no. 226 of 2007 after hearing the respondent. At that stage there was no objection on the ground that there was any suit pending in this court or elsewhere. I am of the view for the aforesaid reason that the present application is certainly not barred by limitation as sought to be contended by Mr. Bhandarkar. In view thereof I pass the following order :

- (i) Mr. Anoshak Daver, Advocate is appointed as Sole Arbitrator to adjudicate upon claims and counter claims, if any.
- (ii) The learned Arbitrator is requested to file his disclosure statement under section 11(8) and Section 12(1) within three weeks with the Prothonotary and Senior Master and provide copies to the parties.
- (iii) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.
- (iv) Fees payable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018.
- (v) Application is disposed in the above terms.
- (vi) In view of the disposal of the application, interim application is also disposed.

(A. K. MENON, J.)