



Application No.1648 of 2022 in
O.P.No.331 of 2020

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M.SUNDAR.,J

Captioned application has been filed in this Court on 28.03.2022 under Section 29A(5) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of convenience, with a prayer for extension of period for making an arbitral award by the Hon'ble Arbitral Tribunal.

2. Admitted facts are that there is an agreement dated 15.03.2018 between the parties; that this agreement is *inter alia* for purchase of business assets (hereinafter 'primary contract' for the sake of convenience and clarity); that clause 5 of the primary contract constituted by Clauses 5.1 and 5.2 serves as arbitration agreement; that arbitral disputes erupted between the parties *inter alia* turning on breach of certain conditions of primary contract; that the parties came to this Court by way of O.P.No.331 of 2020 under Section 11 of A and C Act with a prayer for appointment of a sole Arbitrator; that a Hon'ble single Judge of this Court appointed Hon'ble Mr.Justice K.Venkataraman, a



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former Judge of this Court as sole Arbitrator (hereinafter 'AT' denoting 'Arbitral Tribunal') in and by an order dated 02.09.2020; that first sitting of AT was on 01.10.2020; that the pleadings before AT were completed on 30.11.2020; that the respondent in the captioned matter filed a Civil Revision Petition being C.R.P (MD) No.1881 of 2021 on 21.10.2021 in the Madurai Bench of this Hon'ble Court assailing an order dated 23.09.2021 made by AT in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020; that C.R.P (MD) No.1881 of 2021 was disposed of by a Hon'ble single Judge in the Madurai Bench of this Court in and by order dated 28.02.2022; that respondent before this Court filed a Review Application in Rev.Aplc(MD) No.63 of 2022 and the review application came to be disposed of by the same Hon'ble Judge in and by order dated 29.03.2022; that captioned application has been filed before this Court on 28.03.2022 as already alluded to supra.

3. To be noted, the applicant in the captioned matter is respondent before AT and obviously the respondent in the captioned matter is claimant before AT.



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4. Mr.S.Vijayakumar, learned counsel representing the counsel on record for applicant adverting to the support affidavit submits that 12 months time frame qua Section 29A(1) of A and C Act itself has not elapsed as respondent in the captioned matter filed aforementioned Civil Revision Petition on 21.10.2021 and finality qua Civil Revision Petition was only on 29.03.2022 when the Review came to be disposed of and this period has to be excluded. If this period is excluded, AT still has one month and eight days from 29.03.2022 and therefore, 12 months time elapsed only on 07.04.2022, this application filed on 28.03.2022 is premature is learned counsel's say.

5. Mr.K.Subramaniam, learned Senior Advocate instructed by counsel on record for the respondent adverting to the counter affidavit submitted that he is not opposing the prayer for extension of time for making an award by the AT but he is only insisting that the applicant/respondent before AT should be put on certain terms and conditions. Learned counsel submits that terms and conditions are not in terms of costs or compensation but by way of directives to AT to go by the observations made by Hon'ble single Judge in aforementioned Civil Revision Petition and Review Application. To buttress



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his contention, learned Senior counsel pressed into service a judgement of Hon'ble Delhi High Court in ***Sukhbir Singh Vs. Hindustan Petroleum Corporation Ltd.***, reported in ***2020 SCC OnLine Del 228*** penned by a Hon'ble single Judge of Delhi High Court.

6. This Court carefully considered the rival submissions. At the outset this Court notices that there is no disputation, disagreement or contestation as between the parties before this Court regarding extension of period qua AT for making of the award. In the considered view of this Court this by itself drops the curtains on the captioned matter as the scope of a legal drill under Section 29A(5) is very limited and it is more so as it has to be read in the context of Section 5 of A and C Act which ingrains in it the sublime philosophy underlining A and C Act i.e., intervention by a judicial authority will not perambulate beyond and except in the manner provided in Part I of A and C Act. In other words this sublime philosophy is referred to as minimum judicial intervention.

7. Be that as it may, this Court is of the view that the expression 'on such terms and conditions' occurring in sub-section (5) of Section 29A refers to cost or compensation to a party before AT if this Court is of the view that the



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extending or enlargement of time under sub-section (5) puts one party at some kind of disadvantage. This expression cannot be stretched to give directives to AT while extending time. As regards **Sukhbir Singh** case law, a careful perusal of the facts makes it clear that it was a case where the AT had refused i.e., declined petitioner's request for an opportunity to cross-examine a witness. This factual matrix is vastly nay completely different from the case on hand. It is factually distinguishable and in any event it is an order of another Hon'ble High Court (not that of a coordinate Bench) which at best has only persuasive value.

8. Be that as it may, as regards case law this Court reminds itself of the oft-quoted and celebrated **Padma Sundara Rao** case law i.e., **Padma Sundara Rao Vs. State of Tamil Nadu** reported in (2002) 3 SCC 533. Relevant paragraph in **Padma Sundara Rao** case law is paragraph 9 and the same reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the



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facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

Therefore, **Sukhbir Singh** case law does not come to the aid of the applicant in the case on hand.

9. Reverting to the chronicle and the trajectory the matter has taken as would be evident from the narrative thus far, 12 months time frame qua sub-section (1) of Section 29A elapsed on 07.04.2022 owing to the intervening Civil Revision Petition and Review thereat which means the period from 21.10.2021 to 29.03.2022 stands excluded. As already alluded to supra, captioned application has been filed on 28.03.2022 itself. Therefore, the option for the parties to extend the time frame by another six months under sub-section is still available. As the parties have not opted to take this route and as the parties have opted to come before this Court, considering the facts and circumstances of the case, this Court is of the considered view that this is a fit case to extend the time frame particularly because the extension has become imperative owing to the intervening Civil Revision Petition and Review filed by the respondent in the captioned matter.



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10. Before concluding it is also necessary to record that learned senior counsel submitted that there may be a directive to AT to resort to Fast Track procedure adumbrated in Section 29B of A and C Act. This Court is of the considered view that this cannot be done for three reasons. One reason is, this would be completely outside the scope of captioned application which is under Section 29A(5) of A and C Act. The second reason is Section 29B is extension of party autonomy and Section 29B is an enabling provision which enables the parties to agree in writing to resort to Fast Track proceedings. The third reason is Fast Track procedure as would be evident from the four sub-clauses in sub-section (3) will inter-alia be a procedure where the matter will be decided on written pleadings, documents and submissions without oral hearing. In the case on hand evidence itself is being let in and therefore, absent consent between the parties, this Court cannot give such a directive. As regards the order made by Hon'ble Ladyship in the Civil Revision Petition and Review, though obvious, that being an order made by a Coordinate Bench i.e., another Hon'ble single Judge of this Court that would remain untouched and would obviously govern the proceedings and it is not for this Court to express any opinion or view on the same.



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11. Captioned application is ordered by answering the prayer in the affirmative i.e., by extending the time for Hon'ble AT to make its award in Arbitration Case No.9 of 2020 between the parties in the captioned matter by six months from today. In other words, time is extended upto 23.12.2022 (Friday).

Captioned application ordered on above terms.

23.06.2022

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