

OC-1

ORDER SHEET

AP/398/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

S K ENGINEERING AND ANR.
Versus
M/S. JAI BALAJI INDUSTRIES LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 6th July, 2023.

Appearance:

Mr. Rohit Banerjee, Adv.

Mr. Aditya Mondal, Adv.

...for the petitioner

Mr. Sarvapriya Mukherjee, Adv.

Ms. Rajshree Kajaria, Adv.

...for the respondent

The Court: The present application has admittedly been filed under Sections 14 and 15 of the 1996 Act for termination of the mandate of the learned Sole Arbitrator. The ground taken is of unilateral appointment, though not fleshed out in the pleadings, as well as the Arbitrator having a professional relationship with the respondent.

The allegations made in the application are one-sided and unfair to say the least. The unfairness of the allegations would also appear from the facts which are stark before the Court. An instance of this would also appear from paragraphs 23 and 24 which state that the petitioner did not receive any reply

from the Arbitrator to the letter dated 14th February, 2023. The reply of the Arbitrator, strangely enough, is part of records and is dated 7th April, 2023.

The facts further show that the Arbitrator entered the reference sometime in March, 2013 and two sittings were held on 22nd March, 2013 and 4th June, 2013. The records of the second sitting indicate that the petitioner before the Court failed to file its statement of claim even till 7th April, 2023. In fact, the first letter of the petitioner to the Arbitrator, after commencement of proceedings in March, 2013, was sent on 25th March, 2023. This was after a gap of exactly 10 years from the date of entering the reference. The letter of the Arbitrator of 7th April, 2023 further records that the time to file statement of claim was extended till 18th June, 2013 along with counter-statement and rejoinder but that the petitioner did not file the statement of claim till 7th April, 2023.

Whether an Arbitrator's mandate is to be terminated under Sections 14 and 15 of the 1996 Act is a question of both facts and the law. An applicant who seeks termination of mandate must satisfy the conditions of Section 14 and the additional conditions provided under Section 15 of the Act. Section 14 is on the basis of failure or impossibility of the Arbitrator to act and the mandate being terminated if the Arbitrator becomes *de jure* or *de facto* unable to perform his/her functions.

The mandate can also be terminated if the Arbitrator renders himself/herself ineligible under Section 29-A or Section 12(5) read with Fifth and Seventh Schedules to the Act. There is nothing on record to show on the

material disclosed before the Court that the Arbitrator rendered himself *de jure* or *de facto* ineligible to act or unable to perform his functions. The documents on the other hand, point to the petitioner waking up from its slumber after ten years to write to the Arbitrator but failing to file its statement of claim at the same time or even during the extended period of time.

Even more curious is the fact that the petitioner now prays for an order for the Arbitrator to continue with his mandate and for an opportunity to the petitioner to file its statement of claim. This would also show the complete mala fides in the application.

AP/398/2023 is accordingly dismissed with costs of Rs.20,000/- to be paid by the petitioner to Helpage India within a fortnight from date.

(MOUSHUMI BHATTACHARYA, J.)