

OD-7

ORDER SHEET

AP/556/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

KIRAN PATRA AND ANR.
VS
RATNA DEY AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 30th August, 2023

Appearance:

Mr. Arijit Bhowmick, Adv.

Ms. Pooja Agarwal, Adv.

Mr. Sakya Sen, Adv.

Mr. Biplab Ranjan Bose, Adv.

Mr. Indranil Chandra, Adv.

The Court: This is an application for extension of the learned Arbitrator's mandate under Section 29-A(4) of the 1996 Act.

The case run on behalf of the petitioner is that although the Arbitrator's mandate terminated on and from 1st March, 2023, the respondent gave her consent for an additional six months under Section 29-A(3) of the Act.

Learned counsel appearing for the respondent submits that the pleadings in the petition show that the petitioner had accepted the position that the Arbitrator's mandate expired after 28th February, 2023 and also relies on the recording in the Minutes held on 2nd August, 2023 to urge that the learned

Arbitrator was himself aware of his mandate expiring on 28th February, 2023 and the fact that no extension had been obtained from the Court for extension of the mandate.

Section 29-A(1) of the 1996 Act stipulates that the award must be made within twelve months from the date of completion of the pleadings as contemplated under Section 23(4) of the Act. If the award cannot be made within the stipulated time period, the parties may consent to extension of an additional six months under Section 29-A(3) of the Act. If the award is also not made within the extended period under Section 29-A(3), the parties may file an application before the Court for extension of the mandate under Section 29-A(4) of the Act.

The presumption of Section 29-A(4), as evident from the language used in the said provision, is that the mandate must subsist on the date of making of the application.

The present case rests on the question whether the parties consented to extension of the mandate under Section 29-A(3); more specifically whether the respondent consented to the extension by implication. The issue of implication would arise since there is no written consent on the part of the respondent for extending the mandate under Section 29-A(3) of the Act. Two Minutes of Sittings held on 28th March, 2023 and 2nd August, 2023 have been placed before the Court where the respondent was not only represented by counsel but also participated in the evidence before the Tribunal.

The Minutes of 28th March, 2023 shows that the respondent participated in correcting the evidence taken on 3rd February, 2023. The Minutes on the same date reflects that the petitioner (who is the claimant in the arbitration) examined RW1, who is the respondent's witness. The Minutes of 2nd August, 2023 records that the respondent took an adjournment on the ground that the respondent's witness Mr. S. Dey was unwell and hence could not participate in the proceedings. The Arbitrator proceeds to record that the Arbitrator's mandate expired on 28th February, 2023 and the meeting on 28th March, 2023 was held without any extension having been obtained by the parties.

The fact that the respondent participated in two sittings after expiry of the Arbitrator's mandate on 28th February, 2023, without taking any objection on that count, shows the implied consent on the part of the respondent to extension of the mandate under Section 29-A(3) of the Act. Both the Minutes record the phrase "by consent of the parties". The second Minutes of 2nd August, 2023 further shows that the only ground taken by the respondent for seeking adjournment is on the respondent's witness not being well. The respondent did not take any other ground under the statutory framework for resisting continuation of the arbitration. The learned Arbitrator hence proceeded to fix the next date of sitting on 18th August, 2023.

The respondent can certainly not approbate and reprobate. The minutes leave little doubt that the respondent gave her consent for extension of the Arbitrator's mandate by implication. The respondent's participation in the evidence and offering her witness for cross-examination and thereafter taking

time on the ground of the witness being unwell are sufficient to hold that the parties consented for extension of the mandate under Section 29A(3) of the Act.

If the additional six months is included, the mandate of the Arbitrator will terminate from (28th February, 2023 + six months) on 31st August, 2023. The present application was filed on 16th August, 2023.

Since the application was filed within the existence of the mandate of the Arbitrator, AP/556/2023 is accordingly allowed and disposed of by extending the learned Arbitrator's mandate by six months from 31st August, 2023.

(MOUSHUMI BHATTACHARYA, J.)

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