

OCD-4

ORDER SHEET

AP/727/2023

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

M/S. CEMENTONE ENGINEERING
Versus
THE GENERAL MANAGER, EASTERN RAILWAY AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th December, 2023.

Appearance:

Mr. Tanmoy Sett, Adv.

Ms. Antara Dey, Adv.

...for the petitioner

Ms. Aranika Pandey, Adv.

Ms. Shreya Choudhary, Adv.

...for the respondents

The Court: The petitioner seeks appointment of an Arbitrator in the present application which has been filed under Section 11 of the Arbitration and Conciliation Act, 1996.

The undisputed facts are a first Arbitrator was appointed who made an award in favour of the petitioner. The respondents successfully challenged the award and got it set aside. A second Arbitrator was thereafter appointed who passed an award this time in favour of the respondents. The petitioner sought for setting aside of the said award by an application under Section 34 of the Act but subsequently withdrew the said application. The petitioner has filed the present application for appointment of an arbitrator at this stage.

The 1996 Act makes it clear that an award, good, bad or indifferent, either stays or goes subject to a Section 34 or a Section 37 application. Till the award is either set aside or successfully challenged in a Section 34 or a Section 37 application respectively, there is no scope for appointment of an arbitrator for delivering a second award. The aggrieved party/award-debtor must live with the award until the award is set aside or applications are filed under Section 34 or 37 of the Act.

The petitioner has, for the reasons best known to it, withdrew the challenge to the impugned award on 15th January, 2019. The petitioner waited for 4 years after that and decided to come to the Court for appointment of a third Arbitrator in October, 2023. The law, for certain, does not support this misadventure.

The decision of a Single Bench of the Delhi High Court in *Geeta Poddar vs. Satya Developers Private Limited*, 2022 SCC OnLine Del 2650 was on completely different facts since that the award was set aside by the Court before the issue of appointment of Arbitrator was considered.

In the present case, the award remains in full force as on date.

AP/727/2023 is dismissed for the above reasons.

There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)