

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 134 OF 2023

Mahanagar Realtors & Ors.

...Petitioners

Versus

Manik Nivrutti Kodre & Ors.

...Respondents

Mr. Vaibhav Joglekar, Senior Counsel a/w Mr. Pankaj Das for the Petitioner.

Mr. Shon D. Gadgil and Mr. Rahul Soman for the Respondent Nos. 1, 2, 15 and 16.

Mr. Rahul Kothari, Mr. Deepak Mahesh i/by M/s. Squarely Legal for the Respondent Nos. 3, 4, 7 to 11.

Mr. Murtaza Chherawala, Mr. Neeraj Salodkar, Ms. Mihika Awate, Ms. Pranjali Ranade, Mrs. Asmita Mogre i/by M/s. CNS Juris for the Respondent Nos. 5, 6, 12 to 14 and 17.

CORAM : R.I. CHAGLA J

DATE : 7 September 2023

ORDER :

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1. By this Petition, the Petitioners have sought the extension of the mandate of the Arbitral Tribunal for such period as this Court deems fit and proper. Further, relief had been sought for substitution of the Sole Arbitrator Shri. Pramod Ambekar by appointing any other

fit and proper person to act as an Arbitrator to hear and decide the Arbitral proceedings between the Petitioners, Respondent No. 18 and Respondent Nos. 1 to 17.

2. The Petitioners have referred to certain facts which are relevant in determining the application for extension of mandate of the Arbitrator. On 25th September 2020 the pleadings were completed before the Arbitrator. However, given that the Covid 19 pandemic was prevailing and the Supreme Court had by order extended the period of limitation for all proceedings in Court and including proceedings for extension of mandate under Section 29A of the Arbitration and Conciliation Act, 1996 from 15th March 2020 till 28th February 2022, the Award in the arbitration was to be passed within 12 months from 1st March 2022 instead of from the date of completion of pleadings. This was also the mutual understanding of the parties.

3. The parties to the Arbitral proceedings had by consent under Sub-Section 3 of Section 29A of the Arbitration Act extended the period for passing of the Award by the learned Arbitrator by a further period of six months and that period expired on 1st

September 2023. Thus, the present Application is taken out under Section 29A(4) of the Arbitration Act.

4. Mr. Joglekar, the learned Senior Counsel appearing for the Petitioner has referred to the conduct of the Sole Arbitrator appointed by this Court vide order dated 11th October 2019. He has submitted that as per the said order dated 11th October 2019, the Sole Arbitrator before entering the arbitration reference was to forward a statement of disclosure as per the requirement under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to the Prothonotary & Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties. He has submitted that the learned Arbitrator had not provided the copy of the statement of disclosure to the Petitioner and that for the first time in the Affidavit in Reply to the present Petition, the statement of disclosure has been annexed and made available to the Petitioner. He has submitted that the statement of disclosure had been made available to the Advocates for Respondent No. 1 viz. CNS Juris and that is borne out by the email dated 23rd January 2020 addressed by the Arbitrator's Assistant to the CNS Juris.

5. Mr. Joglekar has submitted that the Sole Arbitrator has been procrastinating the arbitral proceedings and that although this Court in the order dated 11th October 2019 had directed the Sole Arbitrator to make an endeavour to adjudicate the Section 17 Application as expeditiously as possible and in any event, within six months from filing of the Application and endeavour to conclude the arbitral proceedings within time limit specified under Section 29A of the Arbitration Act, the Application under Section 17 filed on 21st December 2019 was decided by the learned arbitrator and order passed only on 12th December 2020. He has further referred to the fact that draft issues filed on 16th January 2021 were finalized only on 8th March 2021. An Application had been made under Section 27 of the Arbitration Act on 21st November 2022 and order passed on 5th January 2023. Further an Application for striking out of evidence made on 25th December 2021 was finally decided only on 6th April 2022. He has submitted that there has been a gross delay in deciding the Applications by the learned Arbitrator.

6. Mr. Joglekar has further submitted that the cross examination of the Plaintiff's witnesses has been allowed to go on endlessly and over 654 questions were allowed to be asked to the

Plaintiff's witness by the Advocate for the Respondent. The cross examination despite having started on 13th June 2022 has ended on 1st November 2022. He has submitted that the learned Arbitrator has failed to provide the minutes of meetings and which is borne out from the list of dates, modes of hearing, Roznama/minutes of meetings which is annexed at Exh.F to the Petition.

7. Mr. Joglekar has submitted that the Sole Arbitrator has adopted a unique practice of recording the presence of the Arbitrator's Advocate Assistant in several of the minutes of arbitral meetings. He has submitted that the Petitioner has lost faith in the Sole Arbitrator and particularly, in view of the Sole Arbitrator being unable to comply with the provision of Section 29A of the Arbitration Act. He has submitted that under Section 29A(6) of the Arbitration Act, this Court may substitute an arbitrator and arbitral proceedings shall continue from the stage already reached and on the basis of evidence and material recorded and the substituted arbitrator shall be deemed to have received the evidence and material. He has submitted that this is a fit case for appointment of a substituted arbitrator.

8. Mr. Gadgil, learned Counsel appearing for the Respondents has submitted that the Application seeking the substitution of the learned Arbitrator is misconceived. He has submitted that the proceedings before the learned Arbitrator appointed by this Court vide order dated 11th October 2019 has been ongoing and that for any delay which may have occasioned in the arbitral proceedings, the same is on account of the Petitioner. He has submitted that the Petitioner after the pleadings were completed on 25th September 2020, produced several documents running into 1000's of pages for which inspection was granted to the Respondents. The production of these documents after the pleadings were completed have been from 4th November 2020 till 30th January 2021, 1st February 2021, 22nd June 2021, 10th November 2021 till 30th January 2021, 13th December 2021, 20th December 2021, 26th April 2022 and 21st October 2022. From 4th November 2020 till 30th January 2021 the documents produced numbered 2200 pages. In view of the voluminous documents produced, time had to be taken for inspection of the documents and thereafter, time taken for cross examination.

9. Mr. Gadgil has submitted that it is incorrect on the part

of learned Counsel for the Petitioner to put the blame of delay on the Respondents themselves, as the record shows that there have been several occasions where the Petitioners have made Applications for striking out defence and for leading the evidence of independent witness i.e. Income Tax Authorities which Applications have been rejected by the learned Arbitrator. He has accordingly, submitted that there is no occasion for substituting the Arbitrator.

10. The learned Counsel for the Respondents has further submitted that the issue of the statement of disclosure not being provided to the Petitioners has been raised for the first time in this Application and was never raised prior thereto. Thus, this contention is merely an afterthought. He has further submitted that given voluminous nature of documents, the learned Arbitrator felt it necessary to be aided by his Advocate Assistant who remained present during the arbitral proceedings. Hence, no fault can be found in the learned Arbitrator recording his appearance in the minutes.

11. Having considered the rival submissions, I am of the view that the delay in the Arbitral proceedings cannot be attributed solely to the Arbitrator. Thus, this is not a case where this

Court would exercise its discretionary powers under Section 29A(6) of the Arbitration Act for substituting the Arbitrator. This is particularly considering that the record before the learned Arbitrator is voluminous comprising of several thousands of pages and the Petitioner themselves have produced several documents and due to which considerable time has been taken in inspection and thereafter, cross examination of the Plaintiffs' witnesses. Another factor to be considered is that there have been Applications made by the Petitioners under Sections 17 as well as under Section 27 of the Arbitration Act and for striking out of defence. This has also resulted in time taken for hearing and deciding these Applications.

12. I do not find any merit in the submissions of Mr. Joglekar on behalf of the Petitioners that the learned Arbitrator has misconducted himself in any manner by not furnishing the statement of disclosure to the Petitioners. The statement of disclosure had been filed with the Prothonotary & Senior Master of this Court. The Advocates for the Respondents had requested the learned Arbitrator to provide the statement of disclosure and there upon the learned Arbitrator had provided the same. If the Petitioners have any grievance with regard to non provision of the statement of disclosure,

the Petitioners could have also written to the learned Arbitrator to provide the same and upon which I have no doubt that the learned Arbitrator would have provided the same.

13. Although it has been contended by Mr. Joglekar on behalf of the Petitioners that the learned Arbitrator is residing in Aurangabad and has to travel to Pune for conducting arbitral meetings, and that expenses is to be borne by the parties, this practice has continued for over four years and there is no necessity now to appoint another Arbitrator in substitution. Further, it appears from the list of meetings and modes of hearing annexed at Exh.F to the Petition that there have been dates when the mode of hearing has been online and the learned Arbitrator has exercised his discretion to hear the proceedings online. Although the pleadings were completed on 25th September 2020, the learned Counsel for the parties are in agreement that commencement of 12 months was from 1st March 2022 and period of 12 months would have expired on 28th February 2023 and thereafter, additional extension of six months had been by consent of parties with the approval of the learned Arbitrator and hence, the period of 1 and 1/2 years has expired recently.

14. The learned Arbitrator is required to be given additional time for completion of the Arbitral proceedings and for passing of Award under Section 29A of the Arbitration Act.

15. Accordingly, following order is passed.:-

- (i) The mandate of the Sole Arbitrator appointed by this Court by order dated 11th October 2019 is extended by a period of 12 months from the date of uploading of this order for continuation of the Arbitral proceedings for passing of Award under Section 29A(1) read with Section 29A(4) of the Arbitration Act.
- (ii) The other prayers in the Arbitration Petition are not pressed.
- (iii) The Arbitration Petition is accordingly, disposed of.
- (iv) There shall be no order as to costs.

[R.I. CHAGLA J.]