

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.18 OF 2021

Ramakant Fakira Nagare

...Petitioner

Versus

M/s Sagar Dairy & Ors.,

...Respondents

Mr. Akshay Pawar i/b Kunal Bhanage, Advocate for Petitioner.

Mr. Sushil Upadhyay, Advocate for Respondents.

CORAM : R.I. CHAGLA, J.

DATE : 5TH JUNE, 2023.

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Sole Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 to adjudicate upon the dispute arising out of Partnership Deed dated 28th October, 1999.

2. Prior to the filing of this Petition, the Arbitration Petition No.70 of 2015 had been filed by the Petitioner under Section 11 of the Act. By order dated 15th July, 2016, this Court had appointed an Arbitrator namely Shri P.L. Joshi, Former District and Sessions Judge

as Sole Arbitrator. This Court had noted that there is no dispute that the Arbitration Agreement exists between the parties. Thereafter, the statement of Claim was filed by the Claimant in the year 2020 and was accepted by the learned Arbitrator. The Respondent was to file their statement of defence and prior to filing of statement of defence, an Application was made in October, 2020 wherein it was claimed that the learned Arbitrator had expired in the year 2018 and in view of no extension of mandate, the Arbitration proceeding came to an end.

3. It is noted that prior to the hearing of the Application of the Respondent filed in October, 2020, the learned Arbitrator appointed by this Court vide order dated 15th July, 2016 had expired. In view of the passing away of the learned Arbitrator appointed by this Court, the present Arbitration Petition has been filed under Section 11 of the Act for appointment of substitute Arbitrator.

4. The learned Counsel appearing for the Respondent has submitted that the Petitioner had not taken steps after the appointment of the Arbitrator vide order dated 15th July, 2016 for a period of four years and only in year 2020, the statement of claim had been filed. He has submitted that under Section 29A of the

Arbitration and Conciliation Act, 1996 it is provided that the Award shall be made by the arbitral tribunal within a period of twelve months from the date of the completion of the pleadings under sub Section 4 of Section 23. He has submitted that the delay in filing of the statement of claim which is a delay of four years cannot extend the mandate of the learned Arbitrator without any application having been made for such extension.

5. The learned Counsel for the Respondent has placed reliance upon the decision of the learned Single Judge of this Court in the case of *Feedback Financial Service Ltd. through its AO Zahid Sultan Vs. Narendra H. Shelar, through LRs & Ors. vide order dated 24th February, 2020*, wherein the learned Single Judge had noted that there has been no extension in the mandate of the Arbitrator i.e. by application of the Petitioner and hence, the Arbitration Proceeding was closed with the mandate terminated. The Petitioner in that case was held to have sought re-starting of the process all over again by presenting the Application under Section 11. It was held by the learned Single Judge that this amounted to a second round of the same Arbitration. Further, this Court noted that there must be some time limit for the Arbitration Proceeding and the emphasis in

arbitration law is on a speedy and time bound disposal. If a Petitioner invoking arbitration is itself remiss in diligently prosecuting the arbitration, it surely cannot be open to the Petitioner to come back to the Court and seek to re-open the arbitration like this. If such constant circular actions are permitted, then conceivably there would be no arbitration at all and no finality in the disputes. The Arbitration law cannot be possibly an aid for a party who is not vigilant in prosecuting its rights and remedies.

6. The learned Counsel for the Respondent has accordingly submitted that the present Arbitration Petition is nothing but a second round of the same Arbitration. Accordingly, by placing reliance on decision of this Court in ***Feedback Financial Service Ltd. (Supra)***, this Court should not allow the present application under Section 11 of the Act.

7. Having considered the submissions, in my view, the decision of this Court in ***Feedback Financial Service Ltd. (Supra)***, can be distinguished on facts. In that case the Respondent had filed an application for closure of the proceedings stating that they had not opened/concluded proceedings for one year. It is noted in that case that there was statement of claim and statement of defence and after

that nothing had happened. There was no extension of mandate by application of Petitioner under Section 29A of the Arbitration and Conciliation Act, 1996 and the arbitration proceeding was closed with the mandate terminated. It was in this context that the aforementioned observations were made by the learned Single Judge of this Court with regard to speedy and time bound Arbitration proceedings.

8. In the present case, the statement of defence has not been filed by the Respondent. Prior to filing of the statement of defence, the Application had been made for termination of mandate of the learned Arbitrator by placing reliance upon Section 29A of the Arbitration and Conciliation Act, 1996. Prior to the decision on the Application of termination of mandate, the learned Arbitrator appointed by this Court vide order dated 15th July, 2016 had expired. Section 29A of the Arbitration and Conciliation Act provides that the Award shall be made by the Arbitral tribunal within a period of 12 months from the date of completion of pleadings under sub Section 4 of Section 23. Here the pleadings are incomplete. Thus, it would be appropriate for an Arbitrator to be appointed in substitution of the Arbitrator, who has expired and where the issue of termination of

mandate of the Arbitration raised in the Application filed by the Respondent has not been decided.

9. Accordingly, since the parties are residing at Ambernath, Smt. Vibha Vikas Virkar is appointed as Arbitrator in substitution of the erstwhile Arbitrator appointed by this Court vide order dated 15th July, 2016. Accordingly, following order is passed :

(i) By consent, Smt. Vibha Vikas Virkar is appointed as Sole Arbitrator to adjudicate the dispute and differences between the parties under the Partnership Deed dated 28th October, 1999.

(ii) The venue of arbitration shall be in Thane.

(iii) The Office to inform the Sole Arbitrator regarding appointment.

(iv) Considering the scope of dispute, the Sole Arbitrator shall make an endeavour to conclude the dispute within six months from the date of hearing.

(v) The Sole Arbitrator shall accept the Statement of Claim as having been filed and permit the Respondent to file statement of defence within a period of four weeks from entering upon the reference.

- (vi) The Sole Arbitrator is requested to file the Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.
- (vii) Parties to appear before the Sole Arbitrator on the date fixed by him.
- (viii) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.
- (ix) Arbitration Petition is disposed of in the above terms.
- (x) No costs.

[R.I. CHAGLA J.]