



A.Nos.1762 & 1763 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Application Nos.1762 and 1763 of 2023

M/s.Sri Chandraprabu Agency,
Rep. By its Proprietor Mr.Suresh Bafna
having office at No.22B,
Mullah Sahib Street,
Sowcarpet, Chennai – 79.

.. Applicant in A.No.1762/23

M/s.Mardia Sons Holdings (P) Ltd.,
Rep. By its Director Mr.Bharat Mardia,
Son of Mr.Jawerchand Marida,
having office at No.5,
Damodaran Street, 1st floor,
Kellys, Chennai – 10.

.. Applicant in A.No.1763/23

-VS-

B.Rajendra Kumar Jain

.. Respondent in both applications

Applications under Section 29(A) of the Arbitration and Conciliation Act, 1996, have been filed seeking to extend the mandate of the learned Arbitrator Mr.G.Ashokapathy for conducting A.C.P.Nos.4 and 5 of 2016 respectively for a period of 6 months.



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For Applicant in both applications : Ms.C.Harini

For Respondent : Mr.M.Praveen Kumar

COMMON ORDER

These applications have been filed under Section 29A of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for extension of time for the arbitral tribunal to pronounce the arbitral award.

2. The applicants have given reasons in the affidavit for seeking extension of time for the arbitral tribunal to pass the arbitral award. The dispute pertains to a loan transaction. According to the applicants, they had lent money to the respondent under the loan agreement which was not repaid. According to the applicants, there is an arbitration clause in the loan agreement. In accordance with the arbitration clause, the applicants have appointed a sole arbitrator to adjudicate the dispute between the applicants and the respondent arising out of the loan agreement. The sole arbitrator has also acted upon the reference and the arbitration is in progress.



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3. The last date of hearing before the arbitrator was 26.03.2020.

Admittedly, there was no further hearing before the arbitrator. However, the applicants would contend that only due to the fact that the respondent had filed a petition seeking to terminate the mandate of the arbitrator, which was rejected by the arbitral tribunal, and the said rejection was also challenged by the respondent, there was a delay on the part of the applicants to file these applications under Section 29A of the Act.

4. It is also the contention of the applicants that due to the intervention of Covid-19, the applications seeking for extension of time for the arbitral tribunal to pronounce the arbitral award could not be filed immediately. It is also their case that oral request was made by the applicants to the arbitrator to complete the arbitral proceedings on time as per the period stipulated under the Act. She would further contend that all throughout the proceedings before the arbitrator, the respondent has participated.



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5. However, a counter affidavit has been filed by the respondent denying the contentions of the applicants. According to him, the loan agreement, which is the subject matter of arbitral proceedings, is a fabricated and forged document. He would also state that the reasons given by the applicants for not filing the petition under Section 29A of the Act earlier are all false. According to him, there was no prohibition for the applicants to file these applications earlier as no order of stay was granted by any Court of law. Therefore, the respondent seeks for dismissal of these applications.

DISCUSSIONS:

6. Admittedly, the last date of hearing before the arbitrator was on 26.03.2020. These applications have been filed under Section 29A of the Act only in the month of March, 2023, that is, after a period of more than 3 years from the date of last hearing before the arbitrator.

7. Learned counsel for the respondent contends that being an unilateral appointment of the arbitrator by the applicants, even if any



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arbitral award is passed against the respondent in the near future, the same will be set aside by this Court under Section 34 of the Act on account of the decision rendered by the Hon'ble Supreme Court in *Perkins Eastman Architects DPC vs. HSCC (India) Limited [(2020) 20 SCC 760]*. It is also admitted by the learned counsel for the applicants that the arbitrator was unilaterally appointed by the applicants. But, however, she would contend that the decision in *Perkins case* was rendered by the Hon'ble Supreme Court in the year 2019, but, even thereafter, the respondent has participated in the arbitral proceedings and therefore, he has acquiesced to the jurisdiction of the arbitrator.

8. While disputing the aforesaid contention, the learned counsel for the respondent would once again reiterate that the agreement based on which the arbitration was initiated by the applicants is a fabricated and forged document and therefore, the arbitrator has got no jurisdiction to decide the arbitral claim made by the applicants against the respondent.



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9. This Court has given careful consideration to the contents of the pleadings as well as the submissions made by the respective counsels. After giving due consideration of the same, this Court notices the following:-

(a) Admittedly, the arbitrator has been appointed by the applicants unilaterally.

(b) There is an inordinate delay on the part of the applicants to file these applications under Section 29A of the Act, since the last date of arbitral hearing was admittedly held on 26.03.2020.

(c) Though the learned counsel for the applicants would submit that the delay arose only due to the filing of an application by the respondent under Section 27 of the Act before this Court seeking for examination of a witness; and filing of Civil Revision Petition challenging the order of the arbitral tribunal rejecting his petition seeking for termination of the mandate of the arbitrator, this Court is not satisfied with the said submissions, since it is an undisputed fact that no stay was granted by any court of law which prevented the applicants from seeking extension of time for the arbitral tribunal to pronounce the arbitral award as per Section 29A of the Act.



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(d) The learned counsel for the applicants also drew the attention of the Court to Section 29A(6) of the Act, which enables this Court to appoint a substitute arbitrator in place of the existing arbitrator while deciding the application under Section 29A of the Act. The question of substituting the arbitrator under Section 29A(6) of the Act will arise only when the applicants are able to satisfy this Court that the applications have been filed within a reasonable time seeking for extension of time for the arbitral tribunal to pronounce the arbitral award.

(e) As observed earlier, when there is no stay granted by any Court of law, there is no prohibition for the applicants to file an application seeking for extension of time immediately after the expiry of the period stipulated for arbitration. Admittedly, in the instant case, the period for completion of the arbitration has got expired as per the provisions of the Act in the year 2020 itself, whereas the present applications have been filed only in the month of March, 2023, that is, beyond the period of 3 years.

(f) Even if these applications are allowed as prayed for, ultimately, the applicants may not be benefitted, as an award passed by an arbitrator, who has been appointed unilaterally by the applicants, may be set aside



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under Section 34 of the Act in view of the judgment rendered by the Hon'ble Supreme Court in *Perkins's case* (cited supra).

10. For the foregoing reasons, there is no merit in these applications and accordingly, these applications are dismissed.

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ABDUL QUDDHOSE, J.

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