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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28th June 2023

+ O.M.P. (MISC). (COMM.) 186/2021

HARKIRAT SINGH SODHI

..... Petitioner

Through: Ms. Chaand Chopra with Mr. Siddharth Shekhar and Mr. Adwaith Sreekumar, Advocates with petitioner in-person.

versus

ORAM FOODS PVT LIMITED & ORS.

..... Respondents

Through: Ms. Ripu Adlakha, Advocate for R1 and 2, Ms. Deepti Kathpalia & Ms. Aksa Thomas, Advocates for R3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

Brief Overview

By way of the present petition under section 29A(4) read with sections 29A(5) and 29A(8) of the Arbitration & Conciliation Act, 1996 ('A&C Act') the petitioner seeks a direction granting extension of time for completion of arbitral proceedings that are on-going between the petitioner and the respondents before Hon'ble Dr. Justice Mukundakam Sharma, former judge of the Supreme Court of India under the aegis of the Delhi International Arbitration Centre ('DIAC').



2. Briefly, the genesis of the disputes between the parties is a registered Lease Deed dated 05.07.2016 for the Second Floor and Third Floor of property bearing No. N-8 (Block 'N' Market), Greater Kailash-I, New Delhi ('subject premises') that was signed between the petitioner and respondent No.1. Arbitral proceedings arose from certain defaults committed by the respondents in payment of rental amounts; as a consequence of which the petitioner terminated the lease deed on 17.04.2017. Subsequent to termination of tenancy, the parties signed a Settlement Agreement dated 08.06.2017, despite which settlement however, the respondents continued to default in payment of the rental amounts, which lead the petitioner to issue another termination notice dated 14.03.2018, directing the respondents to hand-back possession of the subject premises within 15 days of the notice *i.e.*, by 31.03.2018. The respondents however failed to hand-back possession of the subject premises, which were also sealed by the Municipal Corporation of Delhi on 30.05.2018.
3. Thereafter, on 14.12.2018, upon the petitioner's 'Request for Arbitration' filed before the DIAC, Hon'ble Mr. Justice J.K. Mehra, former Judge of the Delhi High Court was appointed as the learned sole arbitrator to adjudicate upon the disputes that had arisen between the parties. On 26.03.2019 the petitioner filed his statement of claim before Justice Mehra; whereupon respondent No.3 filed his reply and statement of defence on 22.05.2019; and respondents Nos. 1 and 2 filed their joint reply and statement of counter-claims on 23.05.2019.
4. However, Justice Mehra passed away on 21.05.2019.



5. In the meantime, sometime in July 2019 the petitioner filed his rejoinder to the respondents' statement of defence and reply to the counter-claims; and the respondents then filed their rejoinder to the petitioner's reply.
6. Pleadings are stated to have been complete as of 29.08.2019.
7. By reason of passing-away of Justice Mehra, on 06.09.2019 the DIAC appointed Hon'ble Mr. Justice Anil Kumar, another former Judge of the Delhi High Court as the learned arbitrator in the matter. Proceedings went on before Justice Anil Kumar; and on 17.10.2020, while disposing-of an application under section 17(ii)(b) of the A&C Act, the learned arbitrator directed respondent No.1 to clear all arrears of rent/charges for use and occupation of the subject premises as well as arrears of damages that were due to the petitioner. The respondents are stated to have failed to comply with that interim order; which constrained the petitioner to file for execution of that order before the learned ADJ, Saket District Courts, New Delhi.
8. From February 2021 onwards however, respondents Nos. 1 and 2 stopped appearing before the learned arbitrator.
9. Regrettably, on 23.04.2021 Justice Anil Kumar also passed away.
10. In view of the demise of the second sole arbitrator, on 28.04.2021, the petitioner wrote yet again to the DIAC for the appointment of another substitute arbitrator. In response to that request, on 02.07.2021, the DIAC appointed Hon'ble Mr. Justice Rajiv Bhalla, former Judge of the Punjab & Haryana High Court as the learned sole arbitrator to take forward the proceedings.



11. However on 17.08.2021 Justice Bhalla withdrew from the arbitral proceedings.
12. Consequently, on 16.09.2021 the DIAC appointed Hon'ble Dr. Justice Mukundakam Sharma, former Judge of the Supreme Court as the learned sole arbitrator, who proceeded with the matter thereafter.
13. This court has heard Ms. Chaand Chopra, learned counsel for the petitioner, as well as Ms. Ripu Adlakha, learned counsel for respondents Nos. 1 and 2 and Ms. Deepti Kathpalia, learned counsel for respondent No.3, who have appeared in the matter.

Submissions on behalf of the petitioner

14. Ms. Chopra submits that the limited issue before this court is that of 'regularisation' of arbitral proceedings by granting extension of time to the learned arbitrator to pass the arbitral award. Counsel submits, that as per section 29A(1) of the A&C Act, as amended by the 2019 Amendment Act, in arbitrations other than international commercial arbitrations, an award is to be made by an arbitral tribunal within 12 months from the date of completion of pleadings.
15. Counsel further submits, that as per the decisions of Co-ordinate Benches of this court in *ONGC Petro Additions Limited vs. Ferns Constructions Co. Inc.*¹ and *Shapoorji Pallonji and Co. Pvt. Ltd. vs. Jindal India Thermal Power Limited*² the 2019 amendments to section 29A(1) are procedural in nature and would therefore be

¹ OMP(Misc.) (Comm) 256/2019

² OMP(Misc.) (Comm) 512/2019



applicable to all pending arbitration proceedings ‘seated’ in India as on 30.08.2019.

16. Furthermore, it is submitted that *vide* order dated 10.01.2022 made in ***In Re: Cognizance for Extension of Limitation***³ the Supreme Court has issued the following directions for determining the period of limitation for completion of arbitral proceedings under section 29A of the A&C Act :

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

“II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

*“IV. **It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996**, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable*

³ S.M.W (C) No. 3 of 2020



Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

(emphasis supplied)

17. Counsel for the petitioner points-out that pleadings in the arbitral proceedings in the present case were completed on 29.08.2019; from which date 12 months were available for completing the arbitral proceedings, that is to say, arbitral proceedings were to be completed by or before 29.08.2020. It is submitted that the period from 30.08.2019 (*i.e.* the day next after completion of pleadings) till 15.03.2020 (both days included) comes to 197 days. Since, in view of the directions of the Supreme Court as referred to above, the period from 15.03.2020 till 28.02.2022 is to be excluded for purposes of calculating the 12-month time period available for completion of arbitral proceedings, the remaining time period of 168 days (*i.e.*, 365 - 197) would be reckoned from 01.03.2022 onwards. This would mean that the *mandate of the learned arbitrator to complete the arbitral proceedings would have expired on 16.08.2022.*
18. Counsel for the petitioner submits therefore, that the present petition which was filed on 21.12.2021 is within the time-period specified in section 29A(4) of the A&C Act. Furthermore, it is argued, that in view of the exceptionally unfortunate circumstances that arose in the course of arbitral proceedings, namely that two learned sole arbitrators appointed in the matter passed away, and the third learned arbitrator withdrew from the proceedings, the ground for seeking extension of the mandate of the fourth learned arbitrator is valid and fully justified.



19. Furthermore, Ms. Chopra also points-out, that as recorded in order dated 27.10.2022, as per e-mail dated 30.08.2022 received from the DIAC, the learned arbitrator has in fact delivered an award on 30.08.2022; which award has been forwarded to DIAC in 'sealed cover' only for the reason that there was delay on the part of the respondents in paying arbitration fee and costs.

Submissions on behalf of the respondents

20. On the other hand, learned counsel for respondents Nos. 1 and 2 vociferously opposes grant of any extension of the mandate of the learned arbitrator, arguing that the petitioner is raising a substantive question of law, viz. whether the 2019 Amendment Act is prospective or retrospective in nature. Counsel for respondents Nos. 1 and 2 submits, that the 2019 Amendment Act is prospective in nature by reason of the clear wording of section 1 of the Amendment Act viz. that the Amendment Act will come into force on such date as the Central Government may notify, which notification happened on 30.08.2019.
21. Furthermore, it is submitted on behalf of respondents Nos. 1 and 2 that section 6 of the General Clauses Act 1897, which deals with the effect of a repeal, says that a repeal will not affect any pending legal proceedings which existed prior to the repealing statute being passed. In view thereof counsel argues, that section 29A(1) as originally inserted by the 2015 Amendment Act w.e.f. 23.10.2015 mandated that an arbitral award was to be rendered within 12 months from the *date the arbitral tribunal enters upon reference*. It is pointed-out, that as per the Explanation to section 29A(1) as originally inserted, an



arbitral tribunal is deemed to have entered upon reference on the date on which the arbitrator (or all the arbitrators) receive a notice in writing in regard to their appointment, which notice in the present case is stated to have been served upon the learned sole arbitrator on 08.01.2019. Counsel also argues, that as per Rule 4.1 of the DIAC (Arbitration Proceeding) Rules 2018, arbitration commences on the date that a request for arbitration is made, which in the present case was on 14.12.2018. Counsel therefore submits, that in accordance with section 29A(1) as originally inserted by the 2015 Amendment Act, the learned arbitrator must be deemed to have entered upon reference on 08.01.2019; and his 12-month *mandate to render an award expired on 08.01.2020*.

22. Counsel for respondents Nos. 1 and 2 further submits that under section 29A(1) of the A&C Act (as amended by the 2015 Amendment Act), in arbitrations other than international commercial arbitrations, the arbitral award is required to be rendered within 12 months from the date of “completion of pleadings” under section 23(4) of the A&C Act (as inserted by the 2019 Amendment Act). It is pointed-out that section 23(4) of the A&C Act says that the “... *statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment*”. The argument accordingly is, that the “date of completion of pleadings” as contemplated in section 29A(1) read with section 23(4) of the A&C Act refers *only* to the filing of the statement of claim and statement of defence and does not include the time taken for filing any rejoinder to



the statement of defence. It is accordingly contended, that the 06-month period contemplated in section 23(4) and the 12-month period contemplated in section 29A(1) of the A&C Act must be reckoned from the date of filing of the statement of defence and not from the date of filing of rejoinder. It is stated that in the present case, the petitioner filed his reply to the counter-claim and rejoinder to the statement of defence on 14.08.2019, which was in any case beyond the 06-month period contemplated in section 23(4). Though, the argument formulated on behalf of respondents Nos.1 and 2 is ambiguous and somewhat convoluted, it appears that the thrust of the argument is that pleadings in the arbitral proceedings were not completed within the time stipulated under the statute. For whatever it is worth, counsel for respondents Nos.1 and 2 also argues that the petitioner cannot be permitted to cherry-pick only some aspects of the 2019 Amendment Act and apply only such amendments as are convenient to its case. It is argued that such stance would create inconsistency, whereby only part of the amended provision would apply. Counsel relies on the decisions of the Supreme Court in *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.*⁴ and *BCCI vs. Kochi Cricket Pvt. Ltd. & Ors.*⁵ to argue that an inconsistent reading of the statute is impermissible, and that the whole of the 2019 Amendment Act is prospective in nature.

⁴ (1994) 4 SCC 602; para 26

⁵ (2018) 6 SCC 287



23. In response to the petitioner's submission that the learned arbitrator has in any case rendered the arbitral award on 30.08.2022, counsel for respondents Nos. 1 and 2 argues that since an arbitral tribunal is a creature of contract and is governed by the provisions of the A&C Act, upon expiry of its mandate, a tribunal has no authority whatsoever to act and any direction or award passed by it would be *non-est* in the eyes of law.
24. Insofar as respondent No. 3 is concerned, as recorded in order dated 22.04.2022, learned counsel for respondent No.3 submits that they do not wish to file a reply; and leaves the decision entirely to the discretion of this court.

Discussion & Conclusions

25. Though much has been argued in the matter especially on behalf of respondents Nos. 1 and 2, who have with much stridency opposed the present petition, what prevails with the court are the following aspects of the matter:
- 25.1 It is the undisputed position that the learned sole arbitrator (who is now stated to have rendered the arbitral award) was the fourth arbitrator appointed to decide the disputes between the parties. This was the result of exceptionally unfortunate circumstances whereby two of the learned arbitrators appointed by the DIAC passed away during the pendency of the proceedings before them, and the third learned arbitrator withdrew from the proceedings;
- 25.2 It is also evident that this matter ran into the phase of the intervening COVID-19 pandemic, which obviously must have



contributed to the delay in conclusion of proceedings by the fourth learned arbitrator;

25.3 To address the widespread problems faced in relation to limitation for filing of proceedings and for computing other timelines contained in various statutory provisions during the COVID-19 pandemic, several orders came to be passed by the Supreme Court. In this behalf, by its order dated 10.01.2022 made in *In Re: Cognizance for Extension of Limitation* (supra) the Supreme Court has specifically directed that while computing the time-period provided under sections 23(4) and 29A of the A&C Act the period from 15.03.2020 till 28.02.2022 shall stand excluded. There can therefore be no doubt, that regardless of any other legal aspect or nuance argued by either of the parties, the extraordinary situation presented by the pandemic is required to be addressed in accordance with the mandate of the Supreme Court, which specifically deals with the issue at hand;

25.4 Though it has been argued on behalf of respondents Nos. 1 and 2 that the 12-month timeline set-down in section 29A of the A&C Act is to be reckoned from the date that the learned arbitrator received a notice in-writing regarding his appointment *i.e.*, to say in accordance with the unamended section 29A, it is seen that Co-ordinate Benches of this court have already taken the view that the 2019 amendment to section 29A(1) are procedural in nature and are therefore applicable to all arbitration proceedings seated in India as on



30.08.2019 *i.e.* the date on which the 2019 amendment came into force. In the present case, there is no dispute that by reason of the chequered history of the matter, arbitral proceedings were pending as on 30.08.2019. In any event, in the exceptional circumstances that prevailed in this matter, if the fourth learned arbitrator came to be seized of the matter only on 16.09.2021 (since two earlier arbitrators had passed-away and the third had withdrawn from the proceedings), the question of applying section 29A as it existed prior to the 2019 amendment would not arise;

25.5 Besides, from the record it appears that pleadings in the matter were completed on 29.08.2019, which would mean that arbitral proceedings were required to be completed by or before 01 year from that date *i.e.* 29.08.2020. Applying the mandate of the Supreme Court *vide* its order dated 10.01.2022 referred to above, for computing time period under section 29A of the A&C Act the period that commenced on 29.08.2019 must be deemed to have stopped running as on 14.03.2020 and thereafter to have re-commenced on 01.03.2022, for completing the arbitral proceedings. Since 197 days had elapsed prior to when the time stopped running, 168 days were available to the learned arbitrator starting 01.03.2022 to complete the arbitral proceedings, which 168 days ended on 15.08.2022. The present petition seeking extension of mandate was filed on 21.12.2021, that is during the period that time had stopped running. During the pendency of the present petition, this court is informed that



- the learned arbitrator has already rendered his award on 30.08.2022 i.e., *only 14 days* beyond the stipulated time and has forwarded the same to DIAC *vide* e-mail dated 30.08.2022;
- 25.6 In these circumstances, this court sees no reason to delve any further into the hyper-technical legal objections raised on behalf of respondents Nos. 1 and 2 as to whether the phrase ‘completion of pleadings’ as contained in section 29A of the A&C Act is to include or exclude the time for filing of rejoinders, based on the wording of section 23(4) of the A&C Act which refers to filing *only* of the statement of claim and statement of defence. This court is constrained to note that regrettably, the conduct of respondents Nos. 1 and 2 betrays an effort to nullify arbitral proceedings that have now finally come to fruition with the arbitral award having been rendered;
- 25.7 Also, the petitioner had already filed the present petition seeking extension of the mandate of the learned arbitrator beyond 16.08.2022, on which date the mandate was to expire. With the arbitral award having been rendered on 30.08.2022, the extension or regularization of the mandate is being sought *only for about 14 days*.
26. In the above view the matter, this court is persuaded to allow the present petition, thereby extending and regularizing the mandate of the learned arbitrator upto the date when the award has been rendered i.e., 30.08.2022.
27. Since the court is informed that despite having received the arbitral award, the DIAC has not released it by reason of the respondents not



having paid the entire arbitral fee and costs, the respondents are directed to pay the entire balance arbitral fee and costs, as may be pending on their part, within 02 weeks from today.

28. The petition stands disposed-of in the above terms.
29. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

**Pronounced *via* video-conferencing on
JUNE 28, 2023/*uj/ak***