

ORDER SHEET

AP/218/2021

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

KOTHARI MEDICAL CENTRE
VS
GENERAL MANAGER INDIA GOVERNMENT MINT

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 10th July, 2024.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Abhijit Ray, Adv.

Md. Ayaan, Adv.

Aishwarya P. Ganguly, Adv.

..for the petitioner

Mr. Arup Nath Bhattacharyya, Adv.

Ms. Sayani Das, Adv.

Ms. Sreetama Biswas, Adv.

Mr. Arya Bhattacharyya, Adv.

...for the respondent

The Court: At the outset, it is to be recorded that after hearing is concluded, learned counsel for the petitioner, on instructions, seeks to withdraw the present application. However, such leave is refused, since the Court, upon hearing both sides, has already expressed its opinion prior to such prayer being made.

The present application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 has been opposed primarily on three grounds.

The first ground is that the claim is palpably barred by limitation, as evident from a letter annexed at page 19 of the present application itself, issued on behalf of the petitioner, where it was clearly disclosed that at least on December 31, 2014, all payment of medical bills in terms of the agreement between the parties had stopped and on May 8, 2015, the date of such communication, the beneficiaries of the respondent organization were not to be further entertained.

Learned counsel for the respondent next contends that the application is also not maintainable in law and in its present form, since under Section 19 of the West Bengal Societies Registration Act, only the President, Secretary or an office bearer authorized by the governing body of the society can sue on behalf of the society. However, the present application has been filed in the name of the society itself. A corollary of the said objection is that the affidavit supporting the application has been affirmed by one Rajendra Singh who has described himself as the General Manager (HR) of the Kothari Medical Centre. Although it has been stated in paragraph 1 thereof that he is the “authorized signatory” of the petitioner, there is no clear statement in the affidavit that he is an office bearer of the society itself and not the medical centre, who has been properly authorized by the governing body of the society.

The third limb of objection is that it is evident from the document annexed at page 13 of the application that the certificate of registration of societies was in the name of the Kothari Scientific and Research Institute whereas the application has been filed by one Kothari Medical Centre.

However, the last limb of the objection is subsequently withdrawn by learned counsel for the respondent when it is pointed out by his counterpart appearing for the petitioner that in the preceding page of the application i.e., at page 12, a certificate issued by the Additional Registrar of Societies has been annexed which goes on to show that the alteration of the name from the Kothari Scientific and Research Institute to Kothari Medical Centre was duly sanctioned by the appropriate authority.

Addressing the first two objections, learned counsel for the petitioner contends that the claim is not 'deadwood' or barred by limitation, since the petitioner is in custody of certain accounts which go on to show that even after 2015 and as late as in the year 2016, which comes within three years (the period of limitation) from the issuance of notice under Section 21 of the 1996 Act, there were transactions between the parties. It is submitted that due to inadvertent omission, such documents could not be annexed to the petition.

Insofar as the other objection regarding the application being not maintainable is concerned, learned counsel for the petitioner seeks leave of Court to carry out necessary amendments to the cause title of the application and to furnish further details, if necessary, regarding the credentials of the person who swore the affidavit in support of the application.

Insofar as the objection as to maintainability within the purview of Section 19 of the West Bengal Societies Registration Act is concerned, this Court is of the opinion that in view of the way that the petition has been framed, such defect is incurable insofar as the present application is

concerned. The matter does not confine itself merely to wrong description in the cause title. The application itself has been filed by the society and not by any of its office bearers and/or President and/or Secretary duly authorized by the governing body. Permitting an amendment to the cause title would not resolve the issue, since it would amount to altering the very chassis of the structure of the application.

Moreover, in view of the affidavit supporting the application having been affirmed by a person who does not come within the contemplation of Section 19 of the said West Bengal Societies Registration Act, this Court is of the opinion that the said defect is also incurable.

Even insofar as the question of limitation is concerned, this Court was initially loath to grant liberty to the petitioner to file a fresh application in proper form, since from the documents which are already on record, it transpires that the claim is palpably time-barred, even as on the date of issuance of the notice under Section 21 of the 1996 Act.

However, this Court is also aware that in an application under Section 11 of the 1996 Act, the Court is merely to act as an administrative authority, only looking into the validity and veracity of the arbitration clause as well as the inherent arbitrability of the issues involved.

At this stage, if the Court finally closes the remedy of the petitioner on the ground of the same being *ex facie* time-barred, despite the petitioner alleging that it is in custody of further documents which were inadvertently not annexed to the application, the same might amount to a travesty of justice, since it may very well be that an otherwise legitimate claim would be

shut out at the stage of Section 11 of the 1996 Act, which does not even contemplate a preliminary adjudication on the issues involved.

However, we cannot be unmindful of the fact that similar applications by the petitioner has been rejected twice previously on technical defects, granting repeated liberties to the petitioner to file afresh.

In view of such palpable harassment caused to the respondent and also keeping in view that the petitioner, despite being in custody of documents which are apparently germane, did not produce or annex such documents either to its application or to its reply even after affidavits were directed to be exchanged, the petitioner ought to compensate the immense harassment caused to the respondent. Accordingly, the petitioner shall pay costs of Rs. 50,000/- to the respondent within a fortnight from date.

AP/218/2021 is dismissed as not maintainable, with liberty to the petitioner to file afresh on the self-same cause of action by curing the defects as indicated above.

It is, however, made clear that in default of payment of the costs as indicated above within a fortnight from date, it will be deemed that the application has been conclusively dismissed on merits without any further opportunity being afforded to the petitioner to take out a fresh application on the self-same cause of action.

(SABYASACHI BHATTACHARYYA, J.)