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IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/72/2024
STEEL AUTHORITY OF INDIA LIMITED
VS
KAMLESH KUMAR SINGH

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 11th December, 2024

Appearance:
Mr. Arijit Basu, Adv.
...for the petitioner.
Ms. Amrita Pandey, Adv.
...for the respondent.

The Court: This is an application for extension of time to enable the learned Arbitrator to make and publish the award. The mandate of the arbitrator expired on April 5, 2004. Petitioner prays for extension on the ground that the proceedings have reached an advanced stage.

Ms. Pandey, learned Advocate for the respondent submits that the Court should appoint a substitute arbitrator on the ground that the arbitrator is an ex-employee of the claimant and he is likely to be biased. Moreover, the claimant has been delaying the proceeding which has caused irreparable loss and injury to the respondent. The learned arbitrator has continuously allowed unnecessary adjournments.

I find from the records that AP 598 of 2023 was filed by the respondent under Section 14 of the Arbitration and Conciliation Act, 1996. The ground

seeking termination of mandate was that the arbitrator was ineligible to act in such capacity as he did not have the independence as required under Section 12 (5) of the Act. A Coordinate Bench found that the relationship between the arbitrator and the claimant ceased five years prior to the date of appointment and as such the seventh schedule would not be a bar. Her lordship was further of the view that the proviso to Section 12 (5) carved out an exception by which parties could waive the applicability of Section 12 (5) of the Act. The proviso to Section 12 (5), in a sense, was an exit route from the applicability of the seventh schedule.

In the present case the petitioner invoked the arbitration clause in the agreement mentioned and gave a choice of the 3 arbitrators to the respondent, which the respondent expressly agreed to by an email dated 20.07.2021 by choosing the present arbitrator. Thus, her lordship was of the view that the arbitrator was not de jure unable to act. Same arguments have been reiterated by the respondent. Thus, the question of appointing a substituted arbitrator at the instance of the respondent when the claimant is before the Court seeking extension of mandate is not permissible. However, the court notices that there has been some delay because of adjournments having been prayed for at the instance of the claimants.

This Court extends the time for the learned Arbitrator to make and publish his award by a further period of one year from the date of communication of this order upon him. The parties are directed to cooperate and not seek unnecessary adjournments.

AP/72/2024 stands disposed of accordingly.

(SHAMPA SARKAR, J.)

pkd/gb