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

AP/837/2023

RANJIT KUMAR PAUL AND ANR.
VS
SANAT KUMAR PAUL

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 10th January, 2024.

Appearance:

Mr. Sudip Deb, Adv.
Mr. Shounak Bhattacharya, Adv.
Mr. Riju Ghosh, Adv.
Mr. Aranyak Saha, Adv.
Ms. Ipsita Ghosh, Adv.
Mr. Abhirup Halder, Adv.
...for the petitioners

Mr. Pranit Bag, Adv.
Mr. Rahul Poddar, Adv.
Mr. Debdutta Saha, Adv.
...for the respondent

The Court: This application is for extension of the learned Arbitrator's mandate under Section 29-A(4) of The Arbitration and Conciliation Act, 1996.

The petitioners (respondents in the arbitration), through learned counsel, pray for extension of time on the primary ground that the pleadings as defined under Section 23(4) of the Act and specifically referred to in Section 29A(1) should also include the rejoinder of the respondent (claimant in the arbitration). Counsel submits that the claimant in the arbitration did not file

its rejoinder to the petitioners' (respondents in the arbitration) counter-claim and hence the period envisaged under Section 23(4) of the 1996 Act should be considered as continuing and the calculation of the timelines under Section 29-A made on that basis. Counsel places the minutes of the sittings to show that the learned Arbitrator referred to the proposed rejoinder of the claimant as part of the pleadings and treated it as such. Counsel also places a mail of 3.10.2023 from the petitioners' advocate-on-record to the learned Arbitrator requesting the Arbitrator to fix a date for hearing of the matter. Counsel also submits that the parties are exploring a settlement.

Learned counsel appearing for the respondent (claimant in the arbitration) places the dates which are relevant for the present application. Counsel places the minutes of the hearings to show that the learned Arbitrator was aware, as far back as on 14.05.2023 and later on 2.10.2023 that his mandate had expired. Counsel also places minutes to show that counsel appearing for the respondents in the arbitration had made a specific submission to say that he was not in a position to give consent without consulting the respondent.

The timelines under Section 29-A of The Arbitration and Conciliation Act, 1996 are well-defined. The Arbitrator is under a statutory mandate to make the Award within 12 months from the date of completion of pleadings. Section 29-A(1) refers to pleadings as defined in Section 23(4) of the Act to mean the statement of claim and the statement of defence. Section 29-A(3) contemplates extension of the 12 months by an additional period of 6 months provided

parties agree to such extension. The Court may extend the mandate under Section 29-A(4) if the award misses the timelines in 29-A(1) and (3).

In the present case, the undisputed dates for filing of the pleadings are as follows. The statement of claim was filed by the respondent (claimant in the arbitration) on 5.8.2022 and the statement of defence along with the counter-claim on 6.9.2022. Hence, the 12 months under Section 29-A(1) ended on 7.9.2023.

The argument of the claimant's proposed rejoinder being treated as part of the pleadings as defined under Section 23(4) of the Act would certainly have been an arguable point if the claimant had filed this rejoinder in the arbitration. The fact remains that the claimant, for reasons which are not relevant for this proceeding, did not file its rejoinder. The starting date of the timeline under Section 29-A(1) of 12 months from the date of completion of pleadings would be 6.9.2022 and end on 7.9.2023.

The submission made on behalf of the respondents in the arbitration that the learned Arbitrator returned a finding on the claimant's proposed rejoinder being part of the pleadings is not acceptable. The minutes dated 19.6.2022 makes it clear that the learned Arbitrator used the word "pleadings" in a general sense and not with any specific reference to either Section 23(4) or to Section 29-A(1) of the 1996 Act. The other observations made in the minutes also make it clear that the procedural order cannot be treated as a finding made by the learned Arbitrator.

The mail shown on behalf of the respondents in the arbitration of 3rd October, 2023 from the advocate-on-record of the respondents requesting the

learned Arbitrator to proceed and fix a date for hearing at the earliest certainly cannot be taken as “consent” as contemplated under Section 29-A(3) of the Act. Section 29-A(3) specifically uses the word “parties” consenting to the extension of 6 months beyond 12 months. Consent under Section 29-A(3) hence cannot mean unilateral consent given by one of the parties. Besides, the Minutes dated 14th May, 2023 clearly records that the respondent in the arbitration had refused to give consent and kept the issue pending till 3rd October, 2023. The dilatory tactics of the respondents in the arbitration has been recorded by the learned Arbitrator in the Minutes dated 24th August, 2022 which records that the respondents have not filed their Statement of Defence within the prescribed timeframe.

In any event, this mail is prefaced by the Arbitrator’s mail of 2nd October, 2023 where the Arbitrator has clearly stated that his mandate has come to an end and that the parties hence must take steps in accordance with law.

The other argument made on behalf of the respondents in the arbitration with regard to Order VI of The Code of Civil Procedure, 1908 is also not relevant since Section 23(4) of the 1996 Act defines and restricts the scope of pleadings for the purpose of the timelines for making of the award under Section 29-A(1) of the Act. Moreover, as stated above, the complexion of the entire matter would have changed had the claimant filed its rejoinder. In the absence of any rejoinder filed by the claimant, this argument loses relevance.

Satnam Global Infraprojects Limited vs. Bharat Heavy Electricals Limited, 2023 SCC OnLine Cal 4668, where the Court had accepted the rejoinder being part of the pleadings was decided on completely different facts. In that case,

the respondent in the arbitration had filed an application for extension of time where the respondent had made a specific statement that the claimant's rejoinder would be taken as part of pleadings under Section 23(4) of the 1996 Act. In the facts of that case, there is no rejoinder from the claimant. The present case substantially differs from the facts of *Satnam Global*.

The argument of sufficiency of cause as contemplated under section 29-A(5) of the 1996 Act presumes continuation of the mandate. *Rohan Builders vs. Berger Paints* : The Court is informed that *Rohan Builders* is pending consideration before the Supreme Court.

Since the mandate of the learned Arbitrator admittedly came to an end on 7th September, 2023, any further extension of the mandate either by way of a belated unilateral consent under Section 29-A(3) or an application for extension under Section 29-A(4) will not be within the legal premise as discussed above.

The argument made on behalf of the claimant in the arbitration with regard to the claimant enjoying an interim order and the respondent being aggrieved by such is not relevant for the present proceeding since the scope of the present application is restricted only to whether the learned Arbitrator's mandate can be extended under Section 29-A of the 1996 Act.

AP/837/2023 is accordingly dismissed.

There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)