

ORDER SHEET

AP-COM/33/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

DEEPAK MEHRA AND ORS.
VS
SUJOY KUMAR NAG AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 17th January, 2024.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Syed Nurul Arefin, Adv.

Mr. Rahul Singh, Adv.

...for the petitioners

Ms. Chama Mookherji, Adv.

Mr. Prithish Chandra, Adv.

Ms. Chandrani Ghosh, Adv.

..for the respondents

The Court: The petitioners are before this Court for extension of the mandate of the Arbitrator under Section 29-A(4) of The Arbitration and Conciliation Act, 1996 Act.

The brief facts leading to the application are as follows.

The Arbitrator was appointed by a co-ordinate Bench by an order dated 23rd December, 2021 which was communicated to the Arbitrator by a letter dated 5th January, 2022. The Arbitrator held the first sitting in the arbitration on 26th January, 2022. The date of sitting was communicated to the parties by way of a letter dated 18th January, 2022. The minutes of the first sitting dated 26th January, 2022 records that the Arbitrator decided to fix an ad hoc amount

of Rs.24 lakhs pending final remuneration which was to be equally shared by the parties and was to be paid within a month from the date of the first sitting. The parties were also directed to file their respective pleadings within certain dates.

The respondents challenged the order of appointment before the Supreme Court and wrote a letter to the Arbitrator on 22nd June, 2022 recording that fact. The respondents also requested the Arbitrator not to proceed with the arbitration and excused itself from filing the Statement of Defence. The Arbitrator did not respond to this letter and kept the arbitration in suspension from 26th January, 2022. The Supreme Court dismissed the respondents' challenge by an order dated 3rd November, 2023. The present application for extension was filed on 19th December, 2023.

The preliminary issue which calls for a decision is whether the mandate of the Arbitrator terminated under Section 29-A of the 1996 Act.

Section 29-A(1) mandates that the arbitral tribunal shall make the Award within 12 months from the date of completion of pleadings. Section 29-A(1) refers to Section 23(4) for further explanation as to the word "pleadings." Section 23(4) requires that the Statement of Claim and the Defence under Section 23 shall be completed within 6 months from the date of the arbitrator/s receiving the notice of the appointment in writing.

In the present case, the Arbitrator received the notice of appointment on 5th January, 2022. Hence, if Section 29-A(1) and Section 23(4) are read together, the mandate of the Arbitrator would have terminated on 3.7.2023.

The reason for this is as follows:

5.1.2022 + 6 months = 4.7.2022.

4.7.2022 + 12 months = 3.7.2023.

This is the position taken by learned counsel appearing for the parties.

However, if this position is accepted by the Court – and the Court is not ready to accept this at the moment for reasons stated below – the petitioner would be disentitled to come to the Court for extension of the mandate. The Court has taken a view in another matter that any application for extension of the Arbitrator's mandate must be made during subsistence of the mandate. Since that matter is now pending before the Supreme Court for consideration, the Court refrains from making any further comments in this regard.

For reasons of commercial and arbitral efficacy, a more acceptable reading of Sections 29-A(1) and 23(4) would be that Section 29-A(1) is silent on the 6 months mentioned in Section 23(4). This un-said part cannot be taken lightly or as a mere legislative slip. Section 29-A(1) mandates that the tribunal must make the award within 12 months from the date of completion of pleadings under Section 23(4). The absence of an outer limit for completion of the Statement of Claim and Defence [as specifically provided for in Section 23(4)] can be construed to the benefit of the parties in the sense of the parties being given a larger timeframe.

As of now, Section 29-A(1) may be construed as referring to the word “pleadings” in a limited context; that is only with regard to defining what the pleadings are - that is the claimants' Statement of Claim and the respondents' Statement of Defence.

If this be the construction, the present case would turn on the fact of the respondents not having filed their Statement of Defence till the date of filing of the present application. Hence, for the purposes of Section 29-A(1) read with the limited contextual application of Section 23(4), the Arbitrator's mandate continued as on the date of filing of the present application. The timelines under Section 29-A(1) and thereafter would only kick in once the pleadings of the parties are complete.

The application for extension is, accordingly, held to be maintainable.

As to whether the Arbitrator, who was appointed by the order of 23rd December, 2021, should continue or not is entirely for the parties to decide in the context of the statute. It should be stated that the Court is not happy with the arbitration remaining in suspension from 26th January, 2022, which is almost two years. The Arbitrator did not respond to the letter of the respondents dated 22nd June, 2022. The Arbitrator remained silent and simply stalled the proceedings - presumably pursuant to the respondents' letter.

The Court was inclined to take a practical view of the matter and permit the Arbitrator to continue only for the reason that the claimant has parted with 11 lakhs and that too only for one sitting held on 26th January, 2022.

Counsel appearing for the parties, however, seek a fresh appointment. Counsel informs the Court that they have considered all the practical and other logistic issues in making the prayer.

Section 15 provides for appointment of a substitute arbitrator. The parties are covered by Section 15(1)(b) in this case.

Considering the inordinate delay in the arbitration and that only one sitting was held since 5th January, 2022, AP-COM 33/2023 is accordingly allowed and disposed of by appointing Mr. Bhaskar Bhattacharyya, former Chief Justice of the Gujarat High Court to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 20th January, 2024 along with the requisite details of the contact person of the petitioner.

The petitioner shall be at liberty of seeking adjustment of the fees paid to the erstwhile arbitrator. The parties shall also seek return of the arbitral records from the erstwhile arbitrator.

(MOUSHUMI BHATTACHARYA, J.)