

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMM. ARBITRATION PETITION NO.09 OF 2023

Orex Pharma Pvt. Ltd. .. Petitioner
Versus
Oriental Insurance Co. Ltd. .. Respondent

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Ms.Sharon Patole for the Petitioner.
Mr.Devendranath S. Joshi for the Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 10th JANUARY, 2024

P.C:-

1. The present Petition filed under Section 29-A of the Arbitration and Conciliation Act, 1996 (for short, **“The Act”**) seeks two-fold reliefs; the first being to extend the time-period of six months under Section 29-A(5) of the Act for declaration of the Award and the second is the substitution of the sole Arbitrator, by exercising the power under Section 29-A(6) of the Act.

2. I have heard the learned counsel for the Petitioner and the learned counsel for the Respondent/Insurance Company.

From perusal of the proceedings, it is evident that by order dated 25/08/2018, a sole Arbitrator was appointed by this Court in Arbitration Petition No.142 of 2017, in the wake of

the disputes arisen between the parties out of the Standard Fire and Special Perils Insurance Policy.

The order recorded that the Arbitrator shall make endeavour to pass the final award within a period of six months. The Arbitrator entered the reference and after expiry of period of six months, by consent, the extension was granted.

3. Arbitration Petition No.11 of 2020 was filed under Section 29-A, seeking extension of the mandate of the Arbitrator, which was accordingly extended till 20/12/2021.

4. The correspondence placed on record in form of e-mails addressed to the sole Arbitrator on 12/01/2021, 21/01/2021, 09/03/2021, 26/07/2021 and 01/10/2021 would clearly reflect that the Arbitrator despite repeated correspondence did not proceed with the arbitral proceedings and remained incommunicative. This has resulted in the arbitral proceedings to be in a lurch, with no progress therein and despite the pleadings being completed, the issues are not settled till date in the arbitral proceedings.

The above circumstances have constrained the Petitioner to invoke sub-section (5) of Section 29-A of the Act, seeking substitution of the Arbitrator, so that he can continue with proceedings from the stage where they are left and an Award can be declared.

5. The learned counsel for the Respondent does not dispute the factual position, but his objection is, though the mandate of the Arbitral Tribunal expired on 20/12/2021, the present Petition is filed in the year 2023 and to be precise on 21/04/2023 and the Respondent has attributed the delay that has occasioned to the Petitioner.

6. I do not find merit in the said submission, since it is pertinent to note that the sole Arbitrator appointed by the Court was completely incommunicative and despite repeated communications being addressed to him, he did not take the arbitration proceedings ahead.

The fault, therefore, cannot be found with either of the parties and, therefore, in this situation, the second relief in the Application about substitution of the Arbitrator, deserve to be granted in view of sub-section (6) of Section 29-A and upon substitution of the Arbitrator, the Arbitral Tribunal, which shall be re-constituted, shall be deemed to be in continuation with the previously appointed Arbitral Tribunal.

7. For the aforesaid reason, the Petition deserve to be allowed on both the counts; firstly, substitution of an Arbitrator and secondly, extension of the mandate of the Arbitral Tribunal, as the new Arbitrator will now take the arbitration proceedings ahead. For the said purpose, Advocate Dormaan Dalal, is appointed as substituted Arbitrator and on his appointment, he shall continue with the arbitration proceedings from the stage of framing of issues.

Appointment of Mr.Dalal shall be subject to the same terms and conditions, as indicated in the order dated 25/04/2018, with only clarification that he shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

The substituted Arbitrator shall make every endeavour to conclude the arbitration proceedings within a period of one year from the date on which he enters the reference.

8. Commercial Arbitration Application No.09 of 2023 stands disposed off in the aforestated terms.

(SMT. BHARATI DANGRE, J.)