

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 221 OF 2024

Nalin Vallabhbhai Patel & Anr.

...Petitioners

Vs.

Atharva Realtors & Ors.

...Respondents

Mr. Rajiv Narula a/w Ms. Mehek Chowdhary i/by Jhangiani, Narula and Associates for the Petitioners.

Mr. V. M. Chavda a/w M. V. Chavan for Respondent Nos.1 and 2.

CORAM : ARIF S. DOCTOR, J.

DATE : 18TH OCTOBER, 2024

P.C.:-

1. The captioned Commercial Arbitration Petition is filed under Section 29A of the Arbitration and Conciliation Act, 1996 (Arbitration Act) and seeks extension of the mandate of the Tribunal which came to be appointed by this Court on 13th January 2020.

2. Mr. Narula Learned Counsel appearing on behalf of the Petitioners submitted that the time under Section 29A of the Arbitration Act had commenced on 10th August 2020 and would have in the normal course expired on 10th

August 2021, but in view of the judgment of the judgment of the Hon'ble Supreme Court in the case of *Re. Cognizance for Extension of Limitation* the mandate of the Tribunal had expired on 1st March 2022.

3. Mr. Narula, then submitted that since there was no time limit prescribed for the filing of a Petition under Section 29A and hence the provisions of Article 137 of the Limitation Act, 1963 would apply. He then placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Rohan Builders (India Private Limited) vs. Berger Paints India Limited*¹ and pointed out that the Hon'ble Supreme Court had now affirmatively held that a Petition for extension of the mandate of an Arbitral Tribunal could even be filed after the expiry of the mandate. He then candidly submitted that though there had been some delay on the part of the Petitioners in filing the present Petition the same was maintainable since it was filled within three years from the date on which the mandate of the Tribunal had expired i.e. 1st March 2022.

4. Mr. Narula then submitted that the delay in filing the present Petition was on account of the fact that after the Arbitral Tribunal passed an Interim Order dated 31st August 2020 there were settlement talks going on between the Parties. He pointed out that it was only in January/February, 2024 that the Petitioners became that the settlement between the Parties would not fructify for the reasons set out in paragraph 21 of the Petition, that the present Petition came to be filed. Mr. Narula then placed reliance upon the judgment of

1 2024 SCC Online SC 2494

the Hon'ble Supreme Court in the case of *Hari Shankar Singhania & Ors. vs. Gaur Hari Singhania & Ors.*² to submit that in cases where parties were in dialogue and settlement talks the period of limitation under Article 137 cannot be said to have commenced.

5. He then also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.*³ to submit that the expression 'sufficient cause' was adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. He submitted that in this factual scenario, it cannot be stated that there was inaction and/or abandonment on the part of the Petitioners in pursuing the arbitration proceedings. He submitted that in fact sufficient cause has been shown by the Petitioners for an extension of the mandate of the Tribunal and it is thus that the present Petition ought to be allowed.

6. The Petition was opposed by Mr. Chavda, Learned Counsel appearing on behalf of Respondent Nos.1 and 2. He at the outset did not deny that parties had entered into settlement talks but that the Parties had only met twice and the settlement talks were not taken to their logical end. He then submitted that it was infact the Petitioner who had not pursued the settlement talks and that the same had failed in or around March 2021. He then submitted

2 (2006) 4 SCC 658

3 (1987) 2 SCC 107

that the settlement talks were also without prejudice and in no manner impacted the arbitration proceedings which the Petitioners ought to have diligently prosecuted or then made an appropriate application to the Court for an extension of time.

7. Mr. Chavda then submitted that the Petitioners had incorrectly stated that the mandate of the Tribunal had expired on 1st March, 2020. He pointed out from the judgment of the Hon'ble Supreme Court in the case of ***Re. Cognizance for Extension of Limitation*** that the period which was to be excluded was from 15th April, 2020 to 28th February, 2022 and not further 90 days as claimed by the Petitioners. Thus he submitted that the mandate of the Tribunal had expired on 28th February, 2022 and the present Petition was filed on 26th April, 2024 which is after over a period of two years from the expiry of the mandate.

8. He then in dealing with the judgments cited by Mr. Narula submitted that the same would have absolutely no applicability to the case at hand. He pointed out that the judgment of the Hon'ble Supreme Court in the case of ***Rohan Builders*** (supra) simply held that an application under Section 29A would be maintainable after the expiry of the mandate of the Tribunal. He pointed out that the Hon'ble Supreme Court had in the said judgment in fact specifically noted that when deciding an application filed under Section 29A (5) of the Arbitration Act, the Court was required to apply its discretion judiciously

and not mechanically. He submitted that the very object of Section 29A was to ensure expeditious disposal/conclusion of arbitration proceedings. It was thus that he submitted that the Petitioners' reliance upon the judgment of ***Rohan Builders*** (supra) was entirely misplaced. Equally he pointed out that the judgment of the Hon'ble Supreme Court in the case of ***Hari Shankar Singhania & Ors.*** (supra) would also not be applicable in the facts of the present case since in the said judgment, the issue of condonation of delay arose under the general provisions of the law of limitation and not in the context of sufficient cause as contemplated under Section 29A(5) of the Arbitration Act.

9. Mr. Chavda then placed reliance upon a judgment of the Hon'ble Supreme Court in the case of ***Basawaraj & Another vs. Special Land Acquisition Officer***⁴ to submit that the term sufficient cause would mean a cause for which the party could not be blamed and where a party had not acted in a negligent manner or with lack of bona fides. In the facts of the present case, he submitted that the Petitioner had abandoned the arbitration or then had acted in a manner which was utterly negligent. He pointed out that the arbitration proceedings infact continued during the COVID-19 pandemic and were held through video conferencing. He thus submitted that there was no reason set out why the Petitioners had not or could not approach this Court earlier for an extension of time. He submitted that the inaction and lack of diligence on the part of the Petitioner in approaching this Court earlier made clear that the conduct of the

4 (2013) 14 SCC 81

Petitioner was such that disentitle the Petitioner from an extension of time under Section 29A of the Arbitration Act. It was in these circumstances he submitted that the present Petition was required to be dismissed.

10. After having heard Learned Counsel and perusing the judgments upon which reliance was placed, I have no hesitation in holding that the Petitioner has not made out any sufficient cause as to why the mandate of the Tribunal should be extended under Section 29A(5) of the Arbitration Act. I say so because, viz.

- A. Even accepting the Petitioners' case that there were settlement talks between the Parties, the record clearly bears out that these settlement talks did not fructify into a settlement as is clear from the Petitioners' own email dated 20th April 2022. The Petitioners did absolutely nothing post this to seek an extension of time until the filing of the present Petition which is over 2 years. There is also no explanation as to why the Petitioner had waited for over two years from this date to file the present Petition.
- B. *Additionally*, to accept the Petitioners' contention that there is no time prescribed for filing a Petition under Section 29A, would in my view be to turn Section 29A on its head. The very provisions of Section 29A of the Arbitration Act lay down the stringent timelines in which Arbitration proceedings have to be conducted. Section 29A(5) itself

makes it clear that the extension of period referred to in sub-section(4) is to be granted only if the Court is satisfied that sufficient cause is shown for extending the mandate. This would therefore in my view include the conduct of the Parties so as to demonstrate that the Parties were diligently pursuing the arbitration proceedings. The judgment of the Hon'ble Supreme Court in the case of ***Rohan Builders*** (supra) itself makes it expressly clear that extension under Section 29A(5) was not to be granted mechanically on filing of the application. In my view, the Petitioners' conduct alone would disentitle the Petitioner to seek an extension of time. Even accepting the Petitioners' case that the mandate expired on 1st March 2022 the present Petition has been filed on 26th April 2024, which delay in my view is adequate to show that the Petitioner was not serious in pursuing the arbitration.

- C. Equally, the judgments of the Hon'ble Supreme Court in the case of ***Collector Land Acquisition, Anantnag & Anr.*** (supra) and ***Hari Shankar Singhania & Ors.*** (supra) would not apply since the said judgments were delivered considering the power of condonation of delay under general of law of limitation and not in the context of Section 29A. Additionally, it is crucial to note that the judgment of the Hon'ble Supreme Court in the case of ***Hari Shankar Singhania & Ors.*** was in the context of section 20 of The Arbitration Act, 1940 and not Section 29A.

D. In my view, it is plainly clear that after the passing of the Interim Order dated 31st August, 2018, the Petitioners have abandoned the arbitration proceedings. Nothing prevented the Petitioners from approaching this Court earlier and equally, nothing prevented the Petitioners from keeping the Learned Arbitrator, who is a Former Judge of this Court informed of the settlement talks etc. That is the least that was expected from the Petitioner, infact from both Parties. Once Parties had committed themselves to the stringent timelines under the Arbitration Act, the Parties were then bound to ensure that the settlement talks etc. were also conducted and concluded within these timelines or then applied for an extension of time at that stage itself and not belatedly as has been done in the present case.

11. Hence, the Petition is entirely devoid and lacking in merit. The Petition is accordingly dismissed.

(ARIF S. DOCTOR, J.)