A.No.4810 of 2024

C.SARAVANAN, J.

This application has been filed by the Applicant who was the Respondent in A.No.6776 of 2023. The aforesaid application was filed by the Respondent herein for extending the mandate of the arbitrator in the arbitration proceedings under Agreement dated 28.08.2017.

2. The Respondent herein had earlier approached this Court in O.P.No.333 of 2021 for resolving the dispute with the Applicant herein and had issued a Notice under Section 21 of the Arbitration and Conciliation Act, 1996. Since the applicant herein had failed to cooperate, the Respondent filed O.P.No.333 of 2021.

3. Ultimately by an Order dated 30.06.2021, this Court had appointed the learned Arbitrator. The pleading was completed before the learned Arbitrator on 23.11.2021. As per Section 29A(1) of the Arbitration and Conciliation Act, 1996 as amended by Section 6 of the Arbitration and Conciliation (Amendment) Act, 2019, the Arbitral Tribunal was expected to make Award within one (1) year from the date

of the completion of the pleading.

4. In other words, the Award should have been made on or before 22.11.2021. It appears that the parties had the option to consent for extending the mandate of the Arbitrator by another six (6) months in terms of Section 29(A)(3) of the Arbitration and Conciliation Act, 1996. However, this was not availed for either by the Respondent/Claimant or by the Applicant who was the Respondent before this Court in A.No.6776 of 2023.

5. It appears that the learned Arbitrator has sent the following e-mails to the parties:-

Sl.No.	Dated
1.	02.09.2021
2.	23.10.2021
3.	09.11.2021
4.	11.11.2021
5.	30.03.2022
6.	02.04.2022
7.	13.04.2022

6. By the last mentioned e-mail dated 13.04.2002, the minutes of the meeting regarding proceedings held on 09.04.2022 was transmitted to

the respective counsels.

7. In the affidavit filed in support of A.No.6776 of 2023, the Respondent has alluded to e-mail dated 21.11.2023 directing the Respondent herein (Applicant therein) to approach this Court for extending the mandate for Section 29A of the Arbitration and Conciliation Act, 1996.

8. Application appears to have been listed for hearing before this Court on 21.12.2023 on which date the matter was adjourned to 04.01.2024.

9. Registry after taking note of service of notice on the applicant herein (Respondent therein) printed the name of the Respondent who is the Applicant herein and allowed the application on 04.01.2024 which is sought to be recalled by virtue of this application to recall Order dated 04.09.2024.

10. The learned counsel for the Applicant would submit that the law has been settled in this regard recently by the Hon'ble Supreme Court

vide its Judgment dated 12.09.2024 in the case of **Rohan Builders (India) Private Limited** vs. **Berger Paints India Limited**, 2024 SCC Online SC 294. A reference was made to Paragraph 15 and 19 of the aforesaid Order, which reads as under:-

> *"15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note that Under Section 29A(5), the power of the Court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the Court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the Court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced. The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.*
>
> *19. In view of the above discussion, we hold that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. The Court while adjudicating such extension applications will be guided by the principle of sufficient cause and our observations in paragraph 15 of the judgment."*

11. It is submitted that the affidavit filed by the Respondent for extending the mandate did not contain any reasons and therefore, there is no sufficient cause for the Court to exercise discretion under Section 29A (5) of the Arbitration and Conciliation Act, 1996.

12. The learned counsel for the Applicant therein also has placed reliance on a recent decision of the Hon'ble Supreme Court in **Greater Noida** vs. **Prabhjit Singh Soni**, reported in 2024 6 SCC 767. A specific reference is made to Paragraph 50, wherein the Hon'ble Supreme Court has enumerated the circumstances under which Orders can be recalled.

13. Paragraph 50 of the said Order reads as under:-

> *"**50.** In light of the discussion above, what emerges is, a court or a tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) IBC, which opens with a non obstante clause, empowers NCLT (the adjudicating authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the*

insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to rehear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where:

(a) the order is without jurisdiction;
(b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and
(c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/tribunal resulting in gross failure of justice."

14. On the other hand the learned counsel for the Respondent has placed reliance on the decision of the Hon'ble Supreme Court in **Budhia Swain and Others** vs. **Gopinath Deb and Others,** (1999) 4 SCC 396, wherein the Hon'ble Supreme Court observed as under:-

"6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank vs. Satyam Fibres (India) (P) Ltd. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order

i. obtained by fraud practised upon the court,
ii. when the court is misled by a party. or

iii. when the court itself commits a mistake which prejudices a party.

In A.R. antulay v. R.S.Nayak (vide para 130), this Court has noticed motions to set aside judgments being permitted where

i. a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,
ii. a judgment was obtained by fraud,
iii. a party has had no notice and a decree was made against him and such party approaches the court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

i. the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,
ii. there exists fraud or collusion in obtaining the judgment,
iii. there has been a mistake of the court prejudicing a party, or
iv. a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented."

15. Having considered the submissions made by the learned counsel for the Applicant and the learned counsel for the Respondent, it is evident that the mandate of the Arbitrator to pass an Award by 22.11.2022 that is twelve (12) months from completion of impleading on 23.11.2021 stood expired in terms of Section 29A(1) of Arbitration and Conciliation Act, 1996.

16. Thereafter, it was for the parties took consent for extending the mandate of the Arbitrator by six (6) months in terms of Section 29A(3) of the Arbitration and Conciliation Act, 1996. In this case, admittedly that was explored by either of the parties instead on the strength of the e-mail sent on 21.11.2023. The application was also filed by the Respondent herein on 23.11.2023 which came to be ordered on 04.01.2024 after notice to the Applicant herein.

17. The case of the Applicant in this application to recall the Order

dated 04.01.2024 passed in A.No.6776 of 2023 is that there is no sufficient grounds made out in the affidavit to recall the Order. However, it is noticed that this Court had taken note of the documents that were filed along with A.No.6776 of 2023. Notice was also served on the Applicant herein in A.No.6776 of 2023 and since the Applicant failed to appear on that day, application was allowed.

18. Taking note of the above it cannot be said that there was no sufficient cause made out for extending the mandate of the learned Arbitrator. After all no prejudice will be caused to the Respondent as otherwise it is for the parties to restart the arbitral proceedings by appointing a new Arbitrator.

19. The parties have no complaints against the learned Arbitrator. In my view, although the attempt of the Applicant is to recall the Order the attempt is only to make temporary gain and to score a point against the Respondent.

20. I am therefore of the view that this application is liable to be

dismissed. It is better for the Applicant to lose a war and win a battle as the quotation of the French Philosopher Niccolo Machiavelli in his celebrated work “Prince”.

21. Under these circumstances, the application is dismissed leaving the Applicant to defend itself in the arbitral proceedings before the learned Arbitrator. Since the arbitral proceedings is pursuant to Order dated 04.01.2024 and it appears that Applicant has not participated, thereafter that the documents have been marked and the evidence of the Respondent is complete, it is open for the Applicant to move suitable application for reopening of the evidence for cross-examining before the learned Arbitrator.

23.09.2024

rgm

C.SARAVANAN, J.

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