



Appln.No.6436 of 2023

Application No.6436 of 2023

WEB CO **C.SARAVANAN, J.**

This application has been filed to extend the mandate of the Arbitral Tribunal. The respondent Nos.1 and 2 are the husband and wife. Respondent No.1 was an employee of the applicant. Since a dispute had arisen, the applicant had invoked the Arbitration Clause and issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 in accordance with the agreement between them.

2. After the reference was made to the Arbitral Tribunal, the first respondent filed an application under Section 16(2) of the Arbitration and Conciliation Act, 1996 on 08.10.2021 and had raised a preliminary objection regarding the arbitrability of the dispute.

3. The case was thereafter heard on 24.11.2021. Ultimately, the Arbitral Tribunal *vide* its order dated 31.12.2021 ruled that it had jurisdiction to decide the dispute between the applicant and the



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respondents. The Arbitral Tribunal had thereafter fixed 18.02.2022 as the date for filing of as the Claim Statement of the claimant and 18.03.2022 as the date for filing of defence statement by respondents. However, on 18.03.2022 the Statement of Defense of the respondents were not filed. The respondents filed their statement of defense only on 26.04.2022.

4. Along with the statement of defense, the second respondent herein (second respondent therein) filed a similar application on 26.04.2022 under Section 16(2) of the Arbitration and Conciliation Act, 1996 which was earlier filed by the 1st respondent.

5. The said application ultimately came to be disposed by the learned Arbitrator on 26.10.2022. Meanwhile, the applicant had earlier filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 on 18.02.2022. It was dismissed by the Arbitral Tribunal on 08.02.2023. The applicant also filed an application under Section 27 of the Arbitration and Conciliation Act, 1996 on 06.03.2023.



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Since the pleadings were completed as early as 26.04.2022, the mandate of the Arbitral Tribunal came to an end on 25.04.2023. Therefore, the application filed under Section 27 of the Arbitration and Conciliation Act, 1996 has been kept pending, pending decision of the High Court to extend the mandate.

6. On 18.08.2023, the applicant filed an application for extending the mandate under Section 29A of the Arbitration and Conciliation Act, 1996.

7. As per Sub-Section (3) to Section 29A of the Arbitration and Conciliation Act, 1996, the parties could have by consent extended the mandate of the Arbitral Tribunal for a period of six months from 25.04.2023.

8. The respondent however refused to give consent for



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extending the mandate of the Arbitral Tribunal vide their e-mail dated 28.06.2023.

9. The learned Arbitrator has stated that it is open for the applicants to invoke the jurisdiction of this Court under Section 27 of the Arbitration and Conciliation Act, 1996, after the mandate of the Arbitral Tribunal is extended after it came to an end on 25.04.2023.

10. The respondents have stated that the mandate of the Arbitral Tribunal cannot be extended and that the Arbitral Tribunal had become *functus officio* and incapable for making any order and therefore proceeding before the Arbitral Tribunal may be terminated.

11. The Arbitral Tribunal by its order dated 28.08.2023 has asked the parties to approach this Court for extending the mandate under Section 29A of the Arbitration and Conciliation Act, 1996.

12. The learned counsel for the respondent has relied three



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judgments of the Calcutta High Court, Patna High Court and that of the Bombay High Court to buttress the point that once the mandate of the Arbitral Tribunal has come to an end, it is not open for either of the parties to approach the Court under Section 29A of the Arbitration and Conciliation Act, 1996 for extending the mandate of the Arbitrator.

13. Specifically, the learned counsel for the respondent has drawn attention to Paragraph Nos.36 and 37 from the decision of the Calcutta High Court in the case of ***Rohan Builders (India) Private Limited Vs. Berger Paints India Limited*** rendered on 06.09.2023 which reads as under:-

“36.The second proviso to Section 29-A(4) hence envisages pendency of an application for extension of the arbitrator's mandate as opposed to filing of an application. Therefore, the mandate can only continue if the application is filed prior to expiry of the mandate and not thereafter. The words in Section 29-A(4) “.... either prior to or after the expiry of the period so specified...” is a deeming fiction which takes shapes to ensure that the application is made during the continuation of the mandate.

37. Section 29-A(4) uses the word “extension” for the period specified under Section



29-A(1) or (3) of the arbitrator's mandate to make the award. There is an conscious omission of the word “renewal” or “revival”. This would mean that the continuing mandate of the arbitrator must form the substratum for an application for extension could be made at any time after expiry of the mandate, Section 29-A(4) would not have used “terminate” but “revive” or “renew”.

14. The learned counsel for the respondent would also draw a reference to the conclusion by the Bombay High Court in ***Mahaveer Realities and Ors Vs. Shirish J.Shah*** in Arbitration Petition No.125 of 2023 vide order dated 21.07.2023. A reference was also made to Paragraph No.88 from the decision of the Patna High Court in the case of ***South Bihar Power Distribution Company Limited Vs. Bhagalpur Electricity Distribution Company Private Limited*** referred to supra.

15. By way of rejoinder, the learned counsel for the applicant would submit that the conduct of the respondents shows that the respondents were responsible for the delay in the proceedings before the Arbitral Tribunal. It is submitted that similar applications were filed



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by each of the respondent under Section 16 questioning the jurisdiction of the Arbitral Tribunal after considerable lag of time. It is further submitted that time for completing the Arbitral proceedings would have expired on 25.04.2023. However, attention of the Tribunal was diverted by the both respondents by filing application under Section 16 of the Arbitration and Conciliation Act, 1996 on 26.04.2022 and that almost six months time of the Arbitral Tribunal was consumed in disposing the second application under Section 16 of the Arbitration and Conciliation Act, 1996 at the behest of the second respondent.

16. I have considered the arguments advanced by the learned counsel for the applicant and the learned counsel for the respondent.

17. I am unable to accede to the views taken by the Calcutta High Court, Bombay High Court and Patna High Court. Section 29A of the Arbitration and Conciliation Act, 1996 prescribes time limit for passing an arbitral Award. As per Sub-Section 4 to Section 29A of the Arbitration and Conciliation Act, 1996, if award is not made within the



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period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has extended the period, either prior to or after the expiry of the period so specified. Section 29A(4) of the Arbitration and Conciliation Act, 1996 reads as under:-

“If award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has either prior to or after the expiry of the period so specified, extended the period.”

18. As per Second proviso to Section 29A(4) to the Arbitration and Conciliation Act, 1996 where an application under Sub-Section(5) is pending, mandate of the Arbitral Tribunal would continue till disposal of the said application. It is not mandatory for an application for extending the mandate to be made before the expiry of the mandate of the Arbitral tribunal. Before extending the mandate, the Court has to be however convinced that there is sufficient cause for extending the mandate of the Arbitral Tribunal.



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19. In this case, admittedly, the second respondent who is the spouse of the first respondent who is represented by the same counsel, delayed the arbitral proceedings by filing an Section 16 application on 26.04.2022, which contributed to the delay of about six months. The application was disposed only on 26.10.2022.

20. Therefore, I do not find any merits in the defense of the respondents in opposing the application for extending the mandate of the Arbitral Tribunal.

21. Considering the same, I am inclined to extend the mandate of the Arbitral Tribunal to pass an Award within a period of 12 months from the date of receipt of a copy of this order.

22. This application stands disposed of.



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