IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**Arb.O.P.(Com.Div.)No.537 of 2023**

Mr.V.Arun Prasad,
Partner, M/s.Sai Shanthi Homes,
No.82, Appaswamy Street, 6th Avenue,
Harrington Road, Chetpet,
Chennai 600 031.

... Petitioners

**Vs.**

1.M/s.Sai Shanthi Homes,
Rep. by its Managing Partner,
Mr.J.Sai Prasad Reddy,
Flat No.7, Saranga Apartments,
No.11, Gopalakrishna Road,
T.Nagar, Chennai 600 017.

2.Mr.J.Sai Prasad Reddy,
Managing Partner,
M/s.Sai Shanthi Homes,
B2, Lalitha Manor Apartments,
4/20, Radhakrishna Street,
T.Nagar, Chennai 600 017.

3.Mrs.Sree Latha,
Partner,
M/s.Sai Shanthi Homes,
B2, Lalitha Manor Apartments,
4/20, Radhakrishna Street,
T.Nagar, Chennai 600 017.

... Respondent

Arbitration Original Petition filed under Section 34(2)(a)(v) and 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 20.07.2023 passed by the Sole Arbitrator in its entirety; and to direct the respondent to pay the costs.

For Petitioner : Mr.P.J.Rishikesh

For Respondent : No appearance

**ORDER**

This Arbitration Original Petition has been filed challenging the award passed by the learned Arbitrator dated 20.07.2023.

2. The case of the petitioner is that the petitioner and the respondents had filed their claim and counter claim respectively before the learned Arbitrator. After hearing the parties, the learned Arbitrator had dismissed both the claim and the counter claim vide award dated 20.07.2023.

Aggrieved over the said award, this original petition has been filed by the petitioner.

3. In the present case, notice was served and the names of the respondents were also printed in the cause list. However, there is no representation on behalf of the respondents, which shows that they have no interest in contesting this matter. Therefore, this Court is inclined to hear the petitioner and proceed to pass the present order.

4. The learned counsel appearing for the petitioner would submit that the impugned award is liable to be set aside since the learned Arbitrator had passed the said award beyond the period of Mandate fixed under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act").

5. By referring Section 29A of the Act, he would submit that the learned Arbitrator is supposed to pass the impugned award within a period of 12 months from the date of completion of pleadings. Thereafter, if any

extension of time is required, as per the terms of Section 29A(3) of the Act, with the consent of the parties, the time limit to pass the award can be extended for a further period of 6 months. In the present case, the pleadings were completed on or before 07.08.2020 and due to COVID pandemic situation, the period between 15.03.2020 to 15.03.2022 has been excluded as per the law laid down by the Hon'ble Apex Court. When such being the case, as per Section 29A of the Act, the 12 months period was expired on 11.12.2022. Thereafter, with the consent of both the parties, the Mandate of the learned Arbitrator was extended for a further period of 6 months for passing the award, in which case, the learned Arbitrator is supposed to pass the award on or before 11.06.2023. However, the award was only passed on 20.07.2023, which is beyond the period of Mandate fixed under Section 29A of the Act.

6. He would also contend that since the Mandate of the learned Arbitrator was expired as early as on 11.06.2023, the learned Arbitrator is not supposed to pass any award unless and otherwise any extension of time is granted as per Section 29A(4) of the Act and hence, he requests this Court

to set aside the impugned award. In this regard, he referred to the paragraph No.24 of the judgement rendered by the Hon'ble Apex Court in ***Tata Sons Private Limited Vs. Siva Industries and Holdings Limited and others*** reported in ***(2023) 5 SCC 421***, which reads as follows:

> *"29. The Committee indicated that international arbitration institutions had been critical of the setting up of timelines for conducting international arbitrations. International arbitral institutions with their own machinery for case management were of the view that they did not require the monitoring of timelines by the intervention of the court. The Committee also noted that in other jurisdictions, timelines for arbitral proceedings are usually agreed by the parties themselves in accordance with the nature and complexity of the dispute. The intervention of the court in the extension of timelines was criticized by arbitral institutions and eventually led to the formulation of the amended provisions of Section 29A which have expressly kept international commercial arbitrations outside the purview of the mandatory timelines provided in Section 29A. Hence, in terms of the amended provisions of Section 29A, arbitral tribunals in international commercial arbitrations are only expected to make an endeavor to complete the proceedings within twelve months from the date of competition of pleadings and are not bound to abide by the time limit prescribed for domestic arbitrations."*

7. Heard the learned counsel for the petitioner and also perused the materials available on record.

8. Considering the submissions made by the learned counsel for the petitioner, it is very clear that in the present case, the Mandate of the learned Arbitrator was expired on 11.06.2023. However, the award was passed only on 20.07.2023. At this juncture, it would be apposite to extract Sections 29A(1) to 29A(4) of the Act, which read as follows:

> "***29A.Time limit for arbitral award.—***
>
> *(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.*
>
> *(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*
>
> *(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*
>
> *(4) If the 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."*

9. On perusal of the provisions of Section 29A(4) of the Act, it is clear that after the expiry of Mandate of the learned Arbitrator, he cannot pass

any award unless and otherwise any extension is granted under Section 29A(4) of the Act. Thus, the Arbitral Tribunal become *"functus officio"* and cannot pass any award beyond the period of Mandate fixed under Section 29A of the Act. However, in the present case, since no such extension was granted, the impugned award passed by the learned Arbitrator is contrary to the provisions of Section 29 of the Act.

10. For the reasons stated above and by following the law laid down by the Hon'ble Apex Court in ***Tata Sons Private Limited*** case, this Court is of the view that the said award is liable to be set aside. Accordingly, the impugned award dated 20.07.2023 is set aside.

11. In the result, this Arbitration Original Petition is allowed. No cost.

**04.06.2024**

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
nsa

**KRISHNAN RAMASAMY.J.,**

nsa

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