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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(113)

CR-726-2021

DATE OF DECISION:- 03.10.2024

HMT LIMITED, PINJORE

...PETITIONER

VERSUS

M/S S.K.V. AGRO DISTRIBUTORS AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Anand Chhibbar, Senior Advocate with
Mr. Utkarsh Khatana, Advocate and
Mr. Lalit Thakur, Advocate
for the petitioner.

None for respondents No.1 and 2 despite service.

Service of respondent No.3 was dispensed with by this Court
vide order dated 12.09.2024.

SUVIR SEHGAL, J. (Oral)

1. By way of instant petition filed under Article 227 of the Constitution of India, petitioner has approached this Court for setting aside order dated 29.01.2020, Annexure P-9, passed by the learned District Judge, Panchkula, whereby application for extension of time filed under Section 29-A of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") by the petitioner has been dismissed.

2. Factual background, in brief, may be noticed. Petitioner entered into a dealership agreement, Annexure P-2, with respondents No.1 and 2 for marketing, sales of HMT tractors, engines, spare parts and accessories.

Petitioner supplied tractors and spare parts to the said respondents from 1993-



94 to 2013-14 and as of 31.03.2017, a sum of Rs.1,03,00,471.64 was due from respondents No.1 and 2. In terms of Clause 21 of the dealership agreement, which provided for the settlement of disputes through arbitration, an Arbitrator-respondent No.3 was appointed and the petitioner submitted a claim statement, Annexure P-4, before the learned Arbitrator, who issued notice to respondents No.1 and 2. Upon appearing, respondents No.1 and 2 participated in the proceedings, but the proceedings could not be concluded within the statutory time limit. On 20.03.2019, both the parties agreed on the extension of time and an application under Section 29-A (4) of the Arbitration Act was filed before the learned District Judge, which was accepted vide order dated 31.05.2019, Annexure P-6, and the time for conclusion of the arbitral proceedings was extended upto 04.09.2019. As the proceedings could not culminate within the extended time, petitioner filed another application dated 05.12.2019, Annexure P-8, for extension of time, which has been rejected by the learned District Judge vide order impugned herein.

3. Learned senior counsel has made a reference to letter dated 09.06.2020, Annexure P-7, received from the learned Arbitrator-respondent No.3, to submit that he has intimated that due to his medical treatment, he is *defacto* unable to perform his functions as an Arbitrator. Besides returning the record of the present proceedings, he also sent back the record of all the arbitral cases pending before him. Learned senior counsel has urged that the learned District Judge has failed to appreciate the legal position and has erred in declining the extension of time for conclusion of the arbitral proceedings.

4. I have heard the learned senior counsel for the petitioner and examined the documents brought on the record.



5. By communication dated 09.06.2020, Annexure P-7, learned Arbitrator-respondent No.3 had stated that he has been inflicted with host of physical infirmities and has been under treatment for the last more than a year. He has stated that there is a visual loss and it has become impossible for him to read and write and dispose of the arbitral cases, which had been entrusted to him. He has also stated that he has a loss of hearing and there is a cancerous growth. Due to his severe medical condition, he expressed inability to perform his functions. In view of physical infirmities, he has written that it has become impossible for him to act as an Arbitrator under Section 14 of the Arbitration Act. This development has taken place after the passing of the impugned order.

6. Application, Annexure P-8, filed under Section 29-A (4) of the Arbitration Act for extension of time has been rejected by the learned District Judge on two grounds. Firstly, the learned District Judge has held that the second application for extension is not maintainable and secondly that the application for extension was instituted four months after the extended period had expired. Both the grounds on which the learned District Judge has rejected the application cannot be sustained in view of the recent judgment of the Supreme Court in **Rohan Builders (India) Private Limited Versus Berger Paints India Limited, 2024 SCC OnLine SC 2494.** Holding that an application for extension of time period for passing an arbitral award under Section 29-A (4) read with Section 29-A (5) of the Arbitration Act is maintainable even after the expiry of twelve months or the extended six-month period, as the case may be, the Apex Court observed that while adjudicating such extension applications, Court will be guided by the principle of sufficient cause and observations made in paragraph 15 of the



judgment. Paras 15 and 16 of the judgment deserve to be noticed and are reproduced hereunder:-

“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.

16. Lastly, Section 29A (6) does not support the narrow interpretation of the expression “terminate”. It states that the court - while deciding an extension application under Section 29A (4) – may substitute one or all the arbitrators. Section 29A (7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the



legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A (8) and 29A (9). The court in terms of Section 29A (8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A (9) stipulates that an application for extension under sub-section (5) must be disposed of expeditiously, with the endeavour of doing so within sixty days from the date of filing.”

7. When examined in the light of the above observations, it is evident that the delay in the conclusion of the proceedings was on account of the deteriorating health condition of the learned Arbitrator. The Arbitrator had been unable to perform his function because he was undergoing treatment for various ailments for the last more than a year. This Court is, therefore, satisfied that there is sufficient cause for extending the time. There is no restriction on the number of times extensions can be sought, though the endeavour should be to conclude the arbitral proceedings within the time line given in the statute. The determining factor is the cause for extension, which should be sufficient. The second application for extension is clearly maintainable. Accordingly, this Court is of the view that the impugned order passed by the learned District Judge cannot be sustained.

8. In the light of the above discussion, impugned order dated 29.01.2020, Annexure P-9, passed by the learned District Judge is set aside and the application for extension of time filed by the petitioner is accepted. Time period for concluding the arbitral proceedings is extended by another period of six months.



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9. The Arbitrator-respondent No.3 has expressed his inability to perform his functions and has returned the arbitral matters vide communication, Annexure P-7. Accordingly, his mandate is terminated and in his place, Mr. Ravinder Kumar Kaushik, IAS (Retd.), resident of House No.711, Sector 40-A, Chandigarh (2nd Address: House No.5524, Sector 38-W, Chandigarh), Mobile No. 9814001762, is nominated as an Arbitrator to determine the dispute between the parties, subject to compliance of the statutory requirements. The nominated Arbitrator will continue with the arbitral proceedings from the stage already reached before the previous Arbitrator. It is clarified that the extended time period would start from the day, the nominated Arbitrator enters upon the reference.

10. Parties are directed to appear before the learned Arbitrator on 05.11.2024, at 12:00 P.M., at the address mentioned above or at any other place, time or day to be fixed by the learned Arbitrator.

11. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

12. Parties will be at liberty to raise all the claims, counter claims, defences, pleas etc. before the learned Arbitrator.

13. Needless to mention that all the questions arising between them in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

14. A copy of this order be sent to the nominated Arbitrator.

(SUVIR SEHGAL)
JUDGE

03.10.2024
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No