



2024:DHC:9276



\$~52

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 13th NOVEMBER, 2024IN THE MATTER OF:+ **O.M.P.(MISC.)(COMM.) 695/2024****OVINGTON FINANCE PVT. LTD.**

.....Petitioner

Through: Mr. Aniket Rajput, Advocate

versus

BINDIYA NAGAR

.....Respondent

Through: Mr. Rahul Yadav, Advocate

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. This is a petition under Section 29A (5) of the Arbitration & Conciliation Act, 1996 on behalf of the Petitioner seeking extension of time for making an arbitral award by the learned Arbitrator.
2. The facts of the case reveal that the Petitioner had entered into a Loan Agreement with the Respondent on 20.11.2018 for the sum of Rs.20 lakhs. Under the loan agreement, a sum of Rs.20 lakhs was disbursed to the Respondent by the Petitioner and repayment was to be made in terms of the loan agreement.
3. Since the Respondent did not adhere to the terms of repayment of the loan amount, the loan agreement was terminated by notice dated 02.03.2022. It is stated that a sum of Rs. 17,58,186/- was due and payable by the Respondent till the termination of the agreement.
4. A legal notice was issued to the Respondent but the Respondent did



2024:DHC:9276



not make the payment which resulted in the Petitioner approaching this Court by filing a petition under Section 11 of the Arbitration & Conciliation Act seeking appointment of an Arbitrator. This Court *vide* Order dated 03.03.2023 in ARB.P. 810/2022 appointed Mr. Hardik Rupal, Advocate, as the Sole Arbitrator to adjudicate the disputes between the parties.

5. The matter is proceeding before the learned Arbitrator. Material on record indicates that on 25.07.2024, the Tribunal was to convene to cross-examine CW-1. However, the matter was adjourned. On 11.07.2024, a request was made by the Claimant to examine additional witness, namely, Prahlad Singh Chauhan, Director & General Manager of the company.

6. Learned Counsel for the Respondent on 02.08.2024 filed an application before the Arbitral Tribunal challenging the mandate of the Tribunal for passing an award beyond the statutory time limit stating that one year period under Section 29A (1) of the Arbitration & Conciliation Act was over and therefore, the mandate of the Arbitrator has to be terminated.

7. On 06.08.2024, the learned Arbitration terminated the proceedings for want of consent by the Respondent to continue with the arbitration proceedings and allowed the application of the Respondent.

8. Learned Counsel for the Petitioner/Claimant stated that the Petitioner would be moving an application for extension of mandate of the Arbitral Tribunal and the learned Arbitrator requested the parties to inform the decision of this Court when the same is passed. The Petitioner has approached this Court by filing the instant petition under Section 29A (5) of the Arbitration & Conciliation Act, 1996 for extending the mandate of the Arbitral Tribunal for a period of one year.

9. On 09.09.2024, this Court issued notice in the matter. On 23.09.2024,



2024:DHC:9276



learned Counsel for the Respondent sought some more time to file the reply.

10. Learned Counsel for the Respondent raised a preliminary objection stating that since the amount that is claimed is less than Rs.2 crore, this Court will not have the jurisdiction to entertain this application under Section 29A(5) of the Arbitration & Conciliation Act.

11. Learned Counsel for the Respondent states that under Section 2(1)(e) of the Arbitration & Conciliation Act, in case of arbitration other than international commercial arbitration, the disputes can only be adjudicated by the principal civil court of original jurisdiction in a district having the jurisdiction to decide the question forming the subject matter of the arbitration and this Court does not have the pecuniary jurisdiction to entertain the application.

12. Learned Counsel for the Respondent places reliance on the Judgment passed by the Andhra Pradesh High Court in in Dr. V V Subbarao v. Dr. Appa Rao Mukkamala & Ors., **2024 SCC OnLine AP 1668**, which has taken a view that after the appointment of an Arbitral Tribunal, the High Court becomes *functus officio* and the mandate can be only extended by the Court as defined under Section 2(1)(e) of the Arbitration & Conciliation Act. Learned Counsel for the Respondent also places reliance on the Judgment passed by the Apex Court in State of West Bengal & Ors. v. Associated Contractors, **(2015) 1 SCC 32**, which is a judgment which has been passed in the context of Section 9 of the Arbitration & Conciliation Act.

13. *Per contra*, learned Counsel for the Petitioner, contends that the issue has been settled by a Coordinate Bench of this Court in DDA v. Tara Chand Sumit Construction Company, **2020 SCC OnLine Del 2501**, wherein this



Court has taken a view that if the appointment is made by a High Court, then only the High Court will have the jurisdiction to entertain the application for extending the mandate of the Arbitral Tribunal.

14. Heard learned Counsel for the parties and perused the material on record.

15. In the present case, the Arbitrator has been appointed by this Court under Section 11(6) of the Arbitration & Conciliation Act. The contention of the learned Counsel for the Respondent is that an arbitrator can be appointed only by an High Court in case of domestic arbitration or by the Hon'ble Supreme Court in case of international arbitration but subsequent to the appointment of arbitrator all other application can be dealt with by the Court of Competent Jurisdiction under Section 2(1)(e) of the Arbitration & Conciliation Act, 1996.

16. Learned Counsel for the Respondent relies on Section 2(1)(e) of the Arbitration & Conciliation Act, 1996. Section 2(1)(e) of the Arbitration & Conciliation Act, 1996 defines 'Court'. Section 2(1)(e) (i) reads as under:-

"2.(1) (e) "Court" means—

(i) in the case of an arbitration other than international commercial arbitration, the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any Court of Small Causes;"

He, therefore, states that since the claim is less than Rs. 2 crores, the Petitioner has to approach the Court having the pecuniary jurisdiction to entertain the dispute.



17. Undoubtedly, the argument raised by the learned Counsel for the Respondent is an attractive one and the Respondent is supported by the Judgment passed the Andhra Pradesh High Court in Dr. V V Subbarao v. Dr. Appa Rao Mukkamala & Ors., **2024 SCC OnLine AP 1668**. However, this Court is unable to agree with the Judgment of the Andhra Pradesh High Court for the reason that if the argument of the learned Counsel for the Respondent is accepted, then there are chances of conflict between the High Court and the concerned Civil Court of original jurisdiction wherein this Court would appoint an Arbitrator under Section 11 of the Arbitration & Conciliation Act, whereas the concerned Civil Court of original jurisdiction under Section 2(1)(e) will have jurisdiction to substitute an Arbitrator which will go against the scheme of the Act, a fact not considered by the Andhra Pradesh High Court.

18. Section 29A(4), (5), (6) of the Arbitration Act reads as under:

"29A. Time limit for arbitral award.--

.....

(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:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

[Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator



*shall continue till the disposal of the said application:
Provided also that the arbitrator shall be given an
opportunity of being heard before the fees is reduced.]*

*(5) The extension of period referred to in sub-section
(4) may be on the application of any of the parties and
may be granted only for sufficient cause and on such
terms and conditions as may be imposed by the Court.*

*(6) While extending the period referred to in sub-
section (4), it shall be open to the Court to substitute
one or all of the arbitrators and if one or all of the
arbitrators are substituted, the arbitral proceedings
shall continue from the stage already reached and on
the basis of the evidence and material already on
record, and the arbitrator(s) appointed under this
section shall be deemed to have received the said
evidence and material."*

19. On an application for extension of mandate, the Court can either extend the mandate or refuse to extend the mandate. Similarly, under Section 29A(6) of the Arbitration Act the Court can allow substitution of one or all of the arbitrators. The power to appoint an arbitration has been conferred only on the High Court in the case of a domestic arbitration and on the Supreme Court in case of international arbitration. If the contention of the learned Counsel for the Respondent is accepted then the power to substitute the arbitrator will vest in a Court other than the High Court or the Supreme Court which will go against the scheme of the Act.

20. This issue has been dealt with by a Coordinate Bench of this Court in DDA v. Tara Chand Sumit Construction Company, **2020 SCC OnLine Del 2501**, which has observed as under:-

"26. When one looks at the definition of the term



‘Court’ under Section 2(1)(e) of the Act, it is clear that in case of International Commercial Arbitration, the Court would mean the High Court, in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of the sui or the High Court having jurisdiction to hear appeals of Courts subordinate to that High Court. However, in cases of arbitration other than International Commercial Arbitration, Court would be the Principal Civil Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide questions forming subject matter of the arbitration if the same had been the subject matter of the suit. This definition has been substituted by way of the Amendment Act 3 of 2016, which came into effect from 23.10.2015.

27. If the definition of the term ‘Court’ is looked into, no doubt the contention of the respondent seems plausible that the power to extend the mandate of the Arbitrator would lie with the Principal Civil Court. However, on a careful analysis, in my opinion, this interpretation would lead to complications and would perhaps be in the teeth of the powers of the Courts under Section 11 of the Act. Thus, the question that poses a challenge is, whether the term ‘Court’ can be interpreted differently in the context of Section 29A. In my view, sub-Section (1) of Section 2 of the Act itself gives that answer, as it begins with the expression “in this part, unless the context otherwise requires”.

28. Power to extend the mandate of an Arbitrator under Section 29A(4), beyond the period of 12 months and further extended period of six months only lies with the Court. This power can be exercised either



before the period has expired or even after the period is over. Neither the Arbitrator can grant this extension and nor can the parties by their mutual consent extend the period beyond 18 months. Till this point, interpreting the term 'Court' to mean the Principal Civil Court as defined in Section 2(1)(e) would, to my mind, pose no difficulty. The complexity, however, arises by virtue of the power of the Court to substitute the Arbitrator while extending the mandate and this complication is of a higher degree if the earlier Arbitrator has been appointed by the High Court or the Supreme Court. Coupled with this, one cannot lose sight of the fact that the Legislature in its wisdom has conferred the powers of appointment of an Arbitrator only on the High Court or the Supreme Court, depending on the nature of arbitration and as and when the power is invoked by either of the parties. There may be many cases in which while extending the mandate of the Arbitrators, the Court may be of the view that for some valid reasons the Arbitrators are required to be substituted, in which case the Court may exercise the power and appoint a substituted Arbitrator and extend the mandate.

29. In case a petition under Section 29A of the Act is filed before the Principal Civil Court for extension of mandate and the occasion for substitution arises, then the Principal Civil Court will be called upon to exercise the power of substituting the Arbitrator. In a given case, the Arbitrator being substituted could be an Arbitrator who had been appointed by the Supreme Court or the High Court. This would lead to a situation where the conflict would arise between the power of superior Courts to appoint Arbitrators under Section 11 of the Act and those of the Civil Court to substitute those Arbitrators under Section 29A of the Act. This would be clearly in the teeth of provisions of Section 11 of the Act, which confers the power of



appointment of Arbitrators only on the High Court or the Supreme Court, as the case may be. The only way, therefore, this conflict can be resolved or reconciled, in my opinion, will be by interpreting the term 'Court' in the context of Section 29A of the Act, to be a Court which has the power to appoint an Arbitrator under Section 11 of the Act. Accepting the contention of the respondent would lead to an inconceivable and impermissible situation where, particularly in case of Court appointed Arbitrators, where the Civil Courts would substitute and appoint Arbitrators, while extending the mandate under Section 29A of the Act.

30. Similarly, in case of International Commercial Arbitration, if one was to follow the definition of the term Court under Section 2(1)(e) and apply the same in a strict sense, then it would be the High Court exercising Original or Appellate jurisdiction which would have the power to extend the mandate and substitute the Arbitrator. In such a situation, the High Court would be substituting an Arbitrator appointed by the Supreme Court which would perhaps lead to the High Court over stepping its jurisdiction as the power to appoint the Arbitrator is exclusively in the domain of the Supreme Court. Thus, in the opinion of this Court, an application under Section 29A of the Act seeking extension of the mandate of the Arbitrator would lie only before the Court which has the power to appoint Arbitrator under Section 11 of the Act and not with the Civil Courts. The interpretation given by learned counsel for the respondent that for purposes of Section 29A, Court would mean the Principal Civil Court in case of domestic arbitration, would nullify the powers of the Superior Courts under Section 11 of the Act.

31. Petitions under Section 11 of the Act are filed irrespective of the pecuniary jurisdiction of the Court and the same analogy would apply to the petitions



under Section 29A of the Act. There is, thus, no merit in the contention of the learned counsel for the respondent that this Court has no pecuniary jurisdiction to entertain the petition, the value of the claims being below Rs. 2 Crores."

(emphasis supplied)

21. Coordinate Bench of this Court in Tara Chand (supra) placed reliance on the Judgment passed the Gujarat High Court in Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel, **2018 SCC OnLine Guj 5017**, wherein the Gujarat High Court observed as under:-

"15. This provision thus make a few things clear. Firstly, the power to extend the mandate of an arbitrator under sub-section (4) of Section 29A beyond the period of twelve months or such further period it may have been extended in terms of sub-section (3) of Section 29A rests with the Court. Neither the arbitrator nor parties even by joint consent can extend such period. The Court on the other hand has vast powers for extension of the period even after such period is over. While doing so the Court could also choose to substitute one or all of the arbitrators and this is where the definition of term 'Court' contained in Section 2(1)(e) does not fit. It is inconceivable that the legislature would vest the power in the Principal Civil Judge to substitute an arbitrator who may have been appointed by the High Court or Supreme Court. Even otherwise, it would be wholly impermissible since the powers for appointment of an arbitrator when the situation so arises, vest in the High Court or the Supreme Court as the case may be in terms of sub-section (4), (5) and (6) of Section 11 of the Act. If therefore there is a case for extension of the term of an arbitrator who has been appointed by the High Court or Supreme Court and if the contention of Shri Mehta that such an application would lie only before the



*Principal Civil Court is upheld, powers under sub-section (6) of Section 29A would be non-operatable. In such a situation sub-section (6) of Section 29A would be rendered otiose. The powers under sub-section (6) of Section 29A are of considerable significance. The powers for extending the mandate of an arbitrator are coupled with the power to substitute an arbitrator. **These powers of substitution of an arbitrator are thus concomitant to the principal powers for granting an extension. If for valid reasons the Court finds that it is a fit case for extending the mandate of the arbitrator but that by itself may not be sufficient to bring about an early end to the arbitral proceedings, the Court may also consider substituting the existing arbitrator.** It would be wholly incumbent to hold that under sub-section (6) of Section 29A the legislature has vested powers in the Civil Court to make appointment of arbitrators by substituting an arbitrator or the whole panel of arbitrators appointed by the High Court under Section 11 of the Act. If we therefore accept this contention of Shri Mehta, it would lead to irreconcilable conflict between the power of the superior Courts to appoint arbitrators under section 11 of the Act and those of the Civil Court to substitute such arbitrators under Section 29A(6). This conflict can be avoided only by understanding the term “court” for the purpose of Section 29A as the Court which appointed the arbitrator in case of Court constituted arbitral Tribunal.*

16. Very similar situation would arise in case of an international commercial arbitration, where the power to make an appointment of an arbitrator in terms of Section 11 vests exclusively with the Supreme Court. In terms of Section 2(1)(e) the Court in such a case would be the High Court either exercising original jurisdiction or appellate jurisdiction. Even in such a case if the High Court were to exercise power of



substitution of an arbitrator, it would be transgressing its jurisdiction since the power to appoint an arbitrator in an international commercial arbitrator rests exclusively with the Supreme Court."

(emphasis supplied)

This Court is in respectful agreement with the Co-ordinate Bench of this Court.

22. The Bombay High Court in KIPL Vistacore Infra Projects v. Municipal Corporation of city of Ichalkarnji, **2024 SSC OnLine Bom 327**, after relying on the Judgment passed by a Coordinate Bench of this Court in Tara Chand (supra) has observed as under:-

"42. The Delhi High Court, has, therefore, considered the entire gamut of the power to be exercised under Section 29A by the 'Court', which include the power given to substitute one or all of the Arbitrators, while extending the period referred to in Sub-Section (4). Evidently, if a contingency arise that while extending the mandate of the Arbitrator, it becomes necessary to substitute an Arbitrator, then the question would arise, whether an Arbitrator appointed by the High Court, can be substituted by the Principal District Judge as the power to appoint an Arbitrator under Section 11 is the exclusive prerogative of the High Court in case of domestic arbitration and the Supreme Court in case of International Arbitration.

43. The legislature, therefore, has consciously used the word 'Court' which is empowered to extend the mandate of the Arbitrator, if it has expired as it is that 'Court' which has appointed the Arbitrator and while extending the period, if the Court finds that the proceedings have been delayed for the reasons attributable to the Arbitral Tribunal, then it is even empowered to reduce fees of the Arbitrator(s), in the



manner set out in the proviso.

44. The term ‘Court’ used in Sub-Section (4) as well as in the Scheme of Section 29A, would therefore, have to be construed as a ‘Court’ in reference to the context. It is highly inconceivable that an Arbitrator is appointed by the High Court or Supreme Court in case of International Commercial Arbitration and the Principal Civil Court of Original Jurisdiction in a district which is sub ordinate to the High Court, shall exercise the power under Sub-Section (4) or or that matter power under Sub-Section (6) of substituting Arbitrator while extending the period referred in Sub-Section 4.

45. Apart from this, Sub-Section (7) and (8) are also illustrative of the intention of the legislature that it never intended to strictly construe the term ‘Court’ as defined in Section 2(1) of the Act.

46. The provision contained in Form of Section 29A inserted by the Amendment Act No. 3 of 2016, which contemplated the timeline for conclusion of the arbitral proceedings with an intention to encourage arbitration as a speedy mode of resolution of disputes. Section 29-A is a scheme in itself which, in order to conclude the arbitration in an expedient manner provided for entitlement of the Tribunal to receive such amount of additional fees as the parties agree if the Award is within a period of six months after the Tribunal enters the reference. It provides a mechanism if the Award is not made within the period specified or the extended period of six months as upon the expiry of this period, the mandate of the Arbitrator shall terminate unless the Court extend the period.

47. The power to be exercised in extending the mandate of Tribunal is of great significance since



neither the parties themselves by consent are empowered to extend the mandate but for the period of six months when it can by consent extend the period by six months, but for further extension, it is only the Court which can be approached and upon being satisfied that the mandate of the Tribunal deserve an extension on sufficient cause being shown upon such terms and conditions as the Court may impose, the mandate can be extended.

48. If the power under Section 29A is to be exercised by Principal Civil Court of the District, though it may be competent to extend the mandate, but when the question of substitution arises, an anomalous situation would result as an Arbitrator appointed by the High Court or Supreme Court shall stand substituted by the Principal Civil Court, as an appointment of the Arbitrator in any case under Section 11 is the prerogative of the High Court in case of Domestic Arbitration and the Supreme Court, in case of International Arbitration."

(emphasis supplied)

23. A perusal of the above-said judgments shows that this Court and the Bombay High Court in KIPL Vistacore Infra Projects (supra) are of the opinion that if power under Section 29A of the Arbitration & Conciliation Act is exercised by a Court subordinate to the High Court, then the Arbitrator appointed by the High Court in case of domestic arbitration or the Supreme Court in case of international commercial arbitration will stand substituted by the competent court of civil jurisdiction which would be in teeth of Section 11 of the Arbitration & Conciliation Act which gives the prerogative only to the High Court in case of domestic arbitration or the Supreme Court in case of international arbitration to appoint Arbitrator



2024:DHC:9276



under Section 11 of the Arbitration & Conciliation Act.

24. This Court is also of the opinion that such an interpretation will give the power to the Civil Court to substitute and also to appoint Arbitrators under Sections 14 and 15 of the Arbitration & Conciliation Act who can be appointed only by the High Courts or the Supreme Court in case of domestic and international arbitration respectively and therefore for the purposes of Section 29A of the Arbitration & Conciliation Act, the term "Court" must mean only to be the Court which has appointed the Arbitrator and therefore the Court to extend the time or substitute the Arbitrator would only be the Court which has appointed the Arbitrator and no other Court.

25. The Judgment passed by the Apex Court in Associated Contractors (supra) which has been relied on by the Petitioner was dealing with an application under Section 9 of the Arbitration & Conciliation Act. The said judgment is not applicable to the facts of the present case. While exercising power under Section 9 of the Arbitration & Conciliation Act, application would have to go before the principal Civil Court of jurisdiction of that District which will have the power to grant interim measures. It is useful to mention at this juncture that Section 9 of the Arbitration & Conciliation Act deals with interim measures passed by a Court and therefore the term "Court" would have to take the meaning of the Court under Section 2(1)(e) whereas Section 29A(4) of the Arbitration & Conciliation Act deals with the power to terminate the mandate or extend the time limit for arbitral award and Section 29A(6) gives the power to the Court to substitute one or all Arbitrators which tantamount to appointment of Arbitrator which otherwise under the scheme of the Act is only with the High Court in case of domestic arbitration and the Apex Court in case of international arbitration. The term



2024:DHC:9276



"court" in Section 29A of the Arbitration Act, therefore, has to be only the High Court in case of domestic arbitration.

26. This Court is therefore in agreement with the view taken by the Coordinate Bench of this Court in Tara Chand (supra) and respectfully disagrees with the view taken by the Andhra Pradesh High Court in Dr. V V Subbarao (supra). The facts of the present case reveal that notice of invocation was sent to the Respondent on 02.03.2022 and this Court appointed an Arbitrator on 03.03.2023. Two years have passed and there has been substantial progress in the arbitration proceedings and there is no concrete reason forthcoming as to why the Respondent is not agreeing to extend the mandate of the Arbitral Tribunal. Valuable time and effort has been spent by the learned Arbitrator and without any valid reason, this Court is not inclined to terminate the mandate of the Arbitral Tribunal. No worthwhile material has been given by the Respondent to show that the Arbitrator has been lax in proceeding with the arbitration or that the mandate of the Arbitral Tribunal has to be terminated.

27. In view of the foregoing, this Court is inclined to extend the mandate of the Arbitral Tribunal for a period of one year from today for making the Arbitral Award.

28. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 13, 2024

hsk