

D/L - 17
06.02.2025
Court. No. 5
S.Kundu

C.O. 4370 of 2024

Shahnawaz Khan
Vs.
Salil Kumar Mitra

Mr. Mainak Bose,
Mr. Neeraj Kumar Pandey,
Mr. S.M. Akhter,
Mr. P. Bharara

...for the petitioner.

Mr. Sabyasachi Chowdhury,
Mr. Sounak Mukhopadhyay,
Mr. Sanjib Dawn

...for the opposite party.

1. Challenging the order dated 20th November, 2024 passed by the learned Arbitral Tribunal rejecting the petitioner's application under the provisions of Section 26 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "said Act") read with Section 45 of the Indian Evidence Act, 1872 the instant revisional application has been filed.
2. This matter has, however, been mentioned citing extreme urgency on the ground that though the revisional application was pending for consideration before this Court, however, in the interregnum the learned Arbitral Tribunal has concluded the proceedings and has reserved the matter for passing the award.

3. Mr. Bose, learned senior advocate appearing in support of the aforesaid revisional application after arguing the matter for some time would candidly submit that at this stage the petitioner does not wish to press the challenge made in the revisional application. The petitioner only seeks liberty to commence and conclude its argument before the learned Arbitral Tribunal. Mr. Bose would submit that the petitioner at present has been rendered remedy less. On the one hand, the petitioner's application under Section 26 of the said Act has not succeeded and on the other hand the petitioner's right to advance argument has been closed.
4. He submits that in the interregnum the time to make and publish the award having expired an application had been filed by the opposite party under Section 29A of the said Act for extending the mandate of the Arbitral Tribunal for making and publishing the award. He would submit that by an order dated 6th February, 2025 the time to make and publish the award by the learned Arbitral Tribunal has been extended by the period of six months. As such, there being no impediment for the Arbitral Tribunal to hear the petitioner, appropriate direction be issued for the petitioner to continue and conclude his argument before the Arbitral Tribunal.
5. Mr. Chowdhury, learned senior advocate appearing on behalf of the opposite party raises serious objection. He submits that the order dated 20th November, 2024

would in no uncertain terms record that the learned Arbitral Tribunal had called upon the respondent who is the petitioner herein to resume his argument on the merits of the matter. On the next sitting of arbitration which was fixed on 23rd November, 2024, the petitioner did not turn up at the meeting. The petitioner also did not turn up on the subsequent date fixed by the learned Arbitral Tribunal i.e. on 24th December, 2024.

6. In such circumstances, to provide one last opportunity to the petitioner the matter was posted for arguments on 3rd January, 2025 with a clear notice that no adjournment for the settling would be granted. On the said date as well since the petitioner sought for an adjournment and wanted to delay the hearing, the learned Arbitral Tribunal was constrained to reject the petitioner's request and was pleased to reserve the matter for passing of award.
7. In support of his aforesaid contention he has placed reliance on the minutes of the meeting dated 3rd January, 2025. It is submitted in the facts noted hereinabove, since the petitioner himself had failed to avail of the opportunity of advancing argument, the learned Arbitral Tribunal has rightly rejected the petitioner's request for adjournment and has reserved the matter for award. No further opportunity should be granted to the petitioner to commence the arguments before the learned Arbitral Tribunal since the learned

Arbitral Tribunal has already reserved the matter for passing of award.

8. Having heard the learned advocates appearing for the respective parties, I find that challenging the order dated 20th November, 2024 the instant revisional application has been filed on 17th December, 2024.
9. Though there was no impediment for the petitioner to proceed before the learned Arbitral Tribunal and commence and conclude the arguments, the petitioner chose not to proceed. Having regard to the observations recorded in the minutes held on 3rd January, 2025, I find that the learned Arbitral Tribunal after providing repeated opportunity to the petitioner and the petitioner having failed to commence his arguments was compelled to close the arguments and reserve the matter for award. Though the aforesaid direction issued by the learned Arbitral Tribunal does not appear to be irregular, however, taking note of the fact that since the revisional application was pending before this Court, and could not be taken up earlier, and noting that the petitioner may not have proceeded with the hearing before the learned Arbitral Tribunal by reasons of pendency of this application, I am of the view that for ends of justice the petitioner should be afforded with one further opportunity to commence and conclude his arguments on a date to be fixed by the learned Arbitral Tribunal subject to payment of cost of

Rs.50,000/- to be paid by the petitioner to the opposite party.

10. Having regard thereto, the order passed by the learned Arbitral Tribunal as recorded in the minutes of the meeting dated 3rd January, 2025 stands varied to the aforesaid extent. The learned Arbitral Tribunal is requested to fix a date and to communicate the same to the parties for the petitioner to continue and conclude the arguments.

11. With the above observations and directions, the revisional application stands disposed of.

12. There shall no order as to costs.

All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)