

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/344/2022
ASHOK KUMAR BHUINYA PROPRIETOR OF A.K. ENTERPRISE
VS
STATE OF WEST BENGAL

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : APRIL 08, 2025

Mr. Agniswar Bhuiya, Adv. ...for petitioner.
Ms. Noelle Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Arindam Mandal, Adv.
Ms. Swagata Ghosh, Adv. ...for respondent/State.

The Court:- This is an application for appointment of a learned Arbitrator upon recording termination of mandate and/or withdrawal/recusal of the learned Arbitrator. The petitioner had taken up the proceeding prior to the amendment in 2017. The application has been described as one under section 11 read with sections 14 and 15 of the said Act.

The petitioner contends that disputes had arisen with regard to a work order which contained an arbitration clause. Clause 25 thereof has been placed. Accordingly, an officer of the respondent was appointed as the arbitrator. The learned Arbitrator failed to conduct the proceedings diligently and failed to act without undue delay. The Statement of Claim was filed at the first sitting of the arbitral Tribunal, i.e., on 20th January, 2012. The second sitting was fixed on March 15, 2012. On March 15, 2012, the respondent neither appeared nor filed its Statement of Defence. The respondent was directed to file a counter by April 10, 2012 and the sitting was fixed on April 28, 2012. The petitioner specially avers that, on the advice of the officials of the respondent, the petitioner sought leave to withdraw from the proceedings and, accordingly, the petitioner issued a letter on May 2, 2012 to the learned

Arbitrator, expressing his intention to withdraw from the arbitration proceedings. The learned Arbitrator by a letter dated November 8, 2012 fixed a sitting on November 19, 2012. As the sitting could not be held on November 19, 2012, another letter dated November 22, 2012 was issued by the learned Arbitrator fixing November 29, 2012. The petitioner contends that dates were fixed by the learned Arbitrator also sometime in April, 2013, but the sittings could not be held. Under such circumstances, the petitioner has approached this court with the prayers as discussed hereinabove.

In paragraph 14 of the application, the petitioner has categorically averred that he was assured by the respondent that, if he withdrew from the arbitration proceeding, the claims would be settled amicably. As the claims were not released, the petitioner has approached this court once again by filing this application, inter alia, praying for appointment of a substitute arbitrator. Further contention of the petitioner is that, after the amendment of 2015 and in view of the legal prohibition under section 12(5) read with Schedules V and VI of the said Act, the learned Arbitrator has also become de jure unable to perform and, as such, a substitute arbitrator must be appointed by this court. The petitioner relies on the decision of a learned Judge of this court in the case of East Indian Minerals Limited vs. Orissa Minerals Development Company Limited And Another, reported at 2023 SCC OnLine Cal 1139, in support of the contention that, there could be no period of limitation for the party to approach this court seeking termination of mandate.

Ms. Banerjee relies on the affidavit in opposition filed to the said application and submits that the learned Arbitrator had recorded the fact that the petitioner wanted to withdraw from the proceedings and had kept the matter for hearing on this issue. Nothing transpired thereafter, the petitioner maintained inordinate silence. Moreover, the letters issued by the petitioner will clearly display the petitioner's intention to withdraw from the arbitration proceeding, thereby giving up the claims. The petitioner, thereafter, prayed for

extension of the contract and it has been specifically stated that the learned Arbitrator issued notices for hearing on various dates and lastly on April 4, 2013. The petitioner did not participate. He did not take back the letter. He restarted the remaining work after May, 2012, upon his prayer for extension, such extension having been granted by the respondent. In a circuitous manner, the petitioner was trying to incorporate the bills for the subsequent work which had been completed after the extension was granted. The application is not maintainable. It is further submitted that the bills were of 2012 and cannot be allowed to be claimed after 10 years.

Having considered the rival contentions of the parties, this court finds that the petitioner had expressed his intention to withdraw from the arbitration proceeding. The arbitrator had recorded such submission. The learned Arbitrator had fixed several dates for the meetings, but the petitioner has not been able to show a single scrap of paper which would indicate that the petitioner intended to participate in the proceedings thereafter, by retracting from his earlier stand and wanted to contest the arbitral proceeding. In fact, the letters written by the petitioner to the respondent which are annexed to the affidavit in opposition clearly indicates that the petitioner had abandoned the arbitral proceeding by withdrawing from the same. First of such letter dated May 3, 2012, is an internal communication of the department which indicates that the petitioner was granted an extension for completing the extra work. Prayer was made by the petitioner on May 2, 2012, for further extension. By a letter dated June 6, 2012, the petitioner had submitted the final bill and the letter reads as follows:-

“Sir,

Most respectfully and humbly I beg to inform you that undersigned had intended to withdraw the arbitration case which had been lodged before the appropriate authority under your department. Instant I have withdrawn the aforesaid arbitration case.

Therefore, you are requested to kindly execute our final bill and please arrange to pay that bill amount in favour of us.

I shall be highly obliged if you kindly accept this humble proposal.

Hope, you will be kind enough to grant my plea.”

The petitioner had intended to withdraw from the arbitral case and had withdrawn the same. He did not take part in the proceedings. He did not take back his letter seeking withdrawal from the proceedings. Under such circumstances, this court holds that the application cannot be allowed, for the following reasons :

- a. Section 15 of the Arbitration and Conciliation Act, 1996 is not applicable in the facts of the case. This is not a case where the arbitrator either recused or withdrew from office;
- b. The grounds for holding termination of mandate are not satisfied. The petitioner had withdrawn from the proceeding by writing a letter to the Arbitrator and also to the respondent;
- c. The petitioner cannot resurrect a dead proceeding, after ten years from withdrawal from the same;
- d. It is not the petitioner's case that he had tried to impress upon the learned Arbitrator that he wanted to participate in the proceeding thereby, taking back the letter by which he had expressed his desire to withdraw;
- e. In any event, this application after ten years, without any pleading as to what caused the delay in filing the same, is not maintainable. The proceedings are no longer alive.

Under such circumstances, the application is dismissed. The decision relied upon by the petitioner is not applicable in the facts of the case.

(SHAMPA SARKAR, J.)