

ORDER SHEET

APO/158/2023

WITH

AP/285/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial Division)

M/S. KOLEY CONSTRUCTION
VERSUS
M/S. TARUN KANTYI CHOWDHURY

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 15th January, 2025.

Appearance:

Mr. Avishek Guha, Adv.

Mr. Ankush Majumdar, Adv.

..for the appellants

Mr. Shiv Shankar Banerjee, Adv.

Ms. Arijita Ghosh, Adv.

Mr. Nilarnab Paul, Adv.

Mr. S. Nanda, Adv.

...for the respondent

1. The appeal is directed against the order dated 3rd August, 2023 in an application for setting aside of an award passed by the learned sole Arbitrator on 14th February, 2023. Before the learned Single Judge, the appellant has raised a preliminary objection that the award was passed by the learned Arbitrator after the time limit for publishing the arbitral award had expired. This preliminary objection was overruled and the matter was listed on 30th August,

2023 in order to enable the appellant to make arguments on other points. This order is under challenge.

2. A preliminary objection is raised with regard to the maintainability of the appeal. The said order is neither appellable under Section 37 of the Arbitration and Conciliation Act, 1996 nor under the provisions of the Commercial Courts Act, 2015. However, if we give a broad interpretation to Section 37(a)(1)(c) of the Arbitration and Conciliation Act, 1996 to mean that it can be read as refusal to set aside an arbitral award under Section 34 notwithstanding its preliminary nature, still then we are not convinced on the argument made on behalf of the appellant that the said issue was decided on a wrong interpretation or misconstruction or wrong appreciation of Section 29-A of the Arbitration and Conciliation Act, 1996.
3. For the purpose of proper appreciation, it is necessary to refer to Section 29-A of the Arbitration and Conciliation Act, 1996 and few dates. Section 29-A of the Arbitration and Conciliation Act, 1996 reads as follows:-

29A. Time limit for arbitral award.--²[(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter

within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]

(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:

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.

³[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.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

*(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.
(emphasis supplied)*

4. The pleadings were completed on 20th October, 2020. The Statement of Defence and counter-claim were filed by the petitioner on 20th October, 2020. Therefore, in terms of Section 29-A(1) of the Act, the award is required to be published on 19th October, 2021. Admittedly, due to pandemic normal life was disrupted and the

effect of such disruption on legal proceeding was considered by the Hon'ble Supreme Court in *Re: Cognizance for Extension of Limitation* reported at (2022) 3 SCC 117. The said judgment, *inter alia*, has taken note of the effect of the time limit set down and mentioned in Section 29-A in paragraph 5(iv) of the said judgment which reads as follows:

“iv) It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceeding”.

5. In view of the aforesaid decision, the period of one year would commence from 28th February, 2022 and the time for making the award under Section 29-A(1) would stand extended till 1st March, 2023.
6. The learned Arbitrator in the 32nd Sitting dated 10th January, 2022 of the arbitration proceeding has taken into consideration the aforesaid decision of the Hon'ble Supreme Court and observed that there is enough time for the award to be published.
7. Thereafter, it appears that the present appellant has participated in the meeting and has made elaborate submission on merits which would be reflected from the minutes of the meeting held on

12th September, 2022 (53rd Sitting) and 14th September, 2022 (54th Sitting).

8. The learned Single Judge in deciding the objection against the present appellant has also taken note of the aforesaid decision of the Hon'ble Supreme Court and has rejected the said plea on the following reason :-

“Upon considering the submissions made on behalf of the parties and the documents placed before the Court, it is clear that whether the petitioner (respondent in the arbitration) objected to extension of the Arbitrator's mandate on 10th January, 2022 or allegedly retracted the same on 14th and 16th September, 2022 is irrelevant when seen against the undisputed facts of the case.

The undisputed fact is that the pleadings were completed by the parties on 20th October, 2020 as provided under Section 23(4) of the 1996 Act. To be more specific, the statement of defence and counter-claim were filed by the petitioner on 20th October, 2020. Hence, the time contemplated under Section 29-A(1) for making of the Award would be 19th October, 2021. The extension of timeframes under Section 29-A were settled by the orders of the Supreme Court which were passed with effect from 15th March, 2020 till 28th February, 2022.

Admittedly, 20th October, 2020 was well within this window and hence, the learned Arbitrator has to be given the full benefit of the relaxed periods of limitation granted by the Supreme Court orders. This relaxation ended on 28th February, 2022 and hence, the time for making of the Award under Section 29-4A(1) would start to run only from 1st March, 2023. The impugned Award was published on 14th February, 2023.

Therefore, there is little doubt that the impugned Award is within the timeframes contemplated under Section 29-A of the 1996 Act and the Award was pronounced within the window under Section 29-A(1).

The preliminary point taken is rejected for the above reasons.”

9. We fully agree with the aforesaid observation of the learned Single Judge.
10. The appeal fails. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)