



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO. 577 OF 2025

IN

MISC. CIVIL APPLICATION (ARB) NO. 648 OF 2023

J.H. Construction Pvt. Ltd.
A company duly registered under the
Companies Act, 1996, having its
registered office at 1st floor b, Poonam
Chambers, Byramji Town, Chindwara
Road, Nagpur 440014, through its
Director Shri Nandumar K. Harchandani.

...APPLICANT

VERSUS

Municipal Council, Bhandara
Through its Chief Executive Officer,
Santaji Nagar, Bhandara, Maharashtra
441904

...NON-APPLICANT

Shri A.S. Dabadghao, Advocate for the applicant
Shri M.P. Khajanchi, Advocate with Shri M.I. Dhatrak, Advocate for Non-applicant

CORAM : CORAM : SHRI ABHAY J. MANTRI, J.
DATE : 17/07/2025

ORAL JUDGMENT

. Heard.

2. The applicant, the original claimant, has filed an application under Section 29-A (4) read with Section 29-A (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '*the Act*'), for extension of the Mandate of the Arbitrator, as said period ended on 03/04/2025.

3. Learned Counsel for the applicant vehemently contended that the applicant has concluded its evidence on 15/10/2024 and filed a pursis to that effect. Thereafter, the respondent Municipal Corporation was directed to file an affidavit of its witness by 10/11/2024, and the matter was fixed for 17/11/2024; however, the respondent failed to file the affidavit. Instead, the respondent filed Writ Petition No. 6670/2024 before this Court, challenging the interlocutory order dated 15/10/2024. The said Writ Petition was dismissed on 30/01/2025. After that, the respondent also failed to file the affidavit of evidence before the Court or challenge the said order before the Hon'ble Apex Court, and therefore, for non-filing of the evidence by the respondent, the statutory period of 12 months of the arbitration for making the award has expired on 03/04/2025. He further argued that the Arbitrator was not at fault for causing the delay in the proceedings, but the respondent itself was at fault for causing the delay in concluding the proceedings.

4. He further argued that the respondents have not given consent for extension of the mandate, and therefore, he has filed this application under Section 29-A (4) of the Act for extension of time.

5. To buttress his submission, he has drawn my attention to paragraph Nos. 5, 6,7,8,9,11, 14 & 15 of the judgment of the Delhi High Court in *Poonam Mittal V. Created Pvt. Ltd., 2024 SCC OnLine Del 6621*, as well as paragraph No. 28 of the judgment of this Court in *Indiabulls Infraestate Ltd. Vs. Imagine Realty Pvt. Ltd., 2025 SCC OnLine Bom 1760*, and emphasised that ‘*the only ground for removal of the Arbitrator under Section 29-A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process.*’ In the case at hand, the Arbitrator was not at fault for causing the delay in adjudication proceedings. Therefore, the applicant is entitled to claim an extension of the Arbitrator’s Mandate.

6. He further argued that even a Judge or Arbitrator may pass erroneous or a manifestly illegal or even markedly perverse order, even then, he does not become biased, and therefore, he submitted that mere marking of the document does not mean that same can be read in the evidence as said document is proved one, and thus,

the objection raised by the learned Counsel for the respondent has no substance, hence, he urge for allowing the application.

7. As against this, learned Counsel for the respondent strenuously opposes the application, contending that the learned Arbitrator has not followed the observations made by this Court while passing the judgment and order in Writ Petition No. 6670/2024, and therefore, caused prejudice to the rights of the respondent while conducting the proceeding.

8. To buttress his submission, he has relied on the judgment of the Hon'ble Apex Court in *ACC Limited Vs. Global Cements Limited, (2012) 7 SCC 71*, and pointed out paragraph Nos. 16 to 18 of the said judgment. He further argued that the mandate of the arbitration proceeding expired on 03/04/2025. Accordingly, the respondent filed the pursis before the Arbitrator on 15/04/2025, and therefore, the mandate is terminated, and it cannot be extended under Section 29-A (4) of the Act. Alternatively, he submitted that he has no objection to the appointment of the Arbitrator by substituting the original Arbitrator with the new one in terms of Section 29-A (6), while extending the period. Therefore, he prayed for the rejection of the application.

9. Perused sections 14, 15 and 29-A of the Act and record, as well as having gone through the judgments relied on by the parties.

This Court in *Indiabulls Infraestate* (supra) has held that,

“The jurisdiction under Section 29-A of the Act is not the one that would give the Court unbridled power to substitute an Arbitrator lightly, without meeting the ingredients of Sections 14 and 15 of the Act.”

In the case at hand, the learned Counsel for the respondent failed to demonstrate that the Arbitrator had not acted *de jure* or *de facto*, and therefore, he is ineligible to conduct further proceedings. Thus, in my view, there is no substance in the argument of the learned Counsel for the respondent to seek the relief of substituting an Arbitrator.

10. Learned Counsel for the respondent only emphasised the point that though the respondent has objected to exhibiting the document, the Arbitrator has ignored the same and exhibited the said document. He challenged the said order before this Court; however, this Court dismissed the petition. Therefore, the said order has attained finality. He has also pointed out the observation made by this Court in the said writ petition, in which this Court requested the Arbitrator to consider paragraph No. 75 of the Full Bench decision in *Hemendra Rasiklal Giha vs. Subodh Mody, 2008(6)*

Mh.L.J 886, which expects the objections to be decided then and there only. That does not mean that this Court has directed the Arbitrator to reconsider the document which was already exhibited without deciding the objection. Therefore, I do not find substance in the contention of the learned Counsel for the respondent in that regard, nor can it be said that it would cause prejudice to its right, as merely exhibiting the documents does not mean that the same can be read in the evidence, as the said document is proved one.

11. *Besides*, it is not the case of the respondent that the Arbitrator acted in a biased manner or failed to conduct the proceedings expeditiously, which is the requirement for substituting the Arbitrator. *Moreover*, it is not the defence of the respondent that it becomes impossible for the Arbitrator to perform his functions de facto or de jure. Furthermore, the Arbitrator's mandate was not terminated by this Court, nor has the respondent made any application for termination of the same. Therefore, I do not find substance in the contention of the learned Counsel for the respondent to substitute the Arbitrator for non-fulfilment/non-compliance with the criteria laid down in sections 14 and 15 of the Act.

12. Apart from the fact that there is no pleading of bias against the Arbitrator, the material on record does not, even on facts, make out a case of reasonable likelihood of bias. Likewise, nothing on record denotes that a delay has occurred, and the proceeding could not be concluded due to the Arbitrator's failure. But the record indicates that the respondent wants to prolong the proceedings.

13. It also appears from the record that the applicant has concluded its evidence on 15/10/2024, and since then, the respondent has failed to adduce their evidence. Therefore, a delay has occurred, and the proceeding could not be concluded until **03/04/2025**. In view of the above facts and the mandate in ***Poonam Mittal*** (supra), and ***Indiabulls*** (supra), I am of the view that the applicant is entitled to seek the extension of the mandate of the Arbitral Tribunal, presided over by the sole Arbitrator Justice A.P. Deshpande (Retired) in the matter of arbitration between the parties. On the other hand, the law laid down in the judgment relied on by the learned Counsel for the respondent has hardly any assistance to him in support of his contention, as the facts in the case at hand differ from the above-cited judgment.

14. Thus, considering the above discussion, in my opinion, no case for substitution of the learned sole Arbitrator presently in the *seisin* of the dispute between the parties is made out. On the contrary, the applicant has made out a case to seek an extension of the Arbitral Tribunal, presided over by Justice A.P. Deshpande (Retired), for a further period of six months from the date of their appearance before the Arbitrator. Hence, the application is allowed, and the mandate of the learned Arbitral Tribunal shall be extended for six months from August 2, 2025. The mandate shall be treated as continuing till today and extended as directed.

15. Learned Counsel for the parties undertake to appear before the learned Arbitrator on 02/08/2025 at 11:00 a.m. The parties are directed to cooperate with the Arbitrator for early disposal of the proceedings. The learned counsel for the applicant's prayer for the imposition of costs is rejected as being without substance.

(ABHAY J. MANTRI, J.)

Jayashree..