

**IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)**

Present :

Hon'ble Justice Moushumi Bhattacharya

AP 716 of 2023

Satnam Global Infraprojects Limited

vs

Bharat Heavy Electricals Limited

For the petitioner : Mr. Priyankar Saha, Adv.
Mr. Oman Ahmad, Adv.
Mr. Vikram Shah, Adv.
Mr. Hemant Tiwari, Adv.
Mr. Tuhin Dey, Adv.

For the respondent : Mr. Rohit Das, Adv.
Ms. Kishwar Rahman, Adv.
Ms. Divya Jyoti Tekriwal, Adv.
Ms. Sristi Roy, Adv.

Last heard on : 17.10.2023

Delivered on : 24.11.2023

Moushumi Bhattacharya, J.

1. The petitioner prays for extension of the mandate of the learned arbitrator in the present application filed under section 29A(4) of The Arbitration and Conciliation Act, 1996.

2. The factual matrix, which is always relevant in an application of this nature, shows that pleadings were completed on 30th September, 2022 and the 12 months, from the date of completion of pleadings under section 29A(1), ended on 1st October, 2023. The petitioner seeks to take advantage of section 12 of The Limitation Act, 1963 and section 9 of the General Clauses Act, 1897, to say that the first date i.e. 1st October, 2023 would get excluded. The petitioner, through learned counsel, also seeks to take the benefit of 2nd October, 2023 being a national holiday and a Court holiday as also section 4 of The Limitation Act. The present application was filed on the next working day i.e. 3rd October, 2023.

3. Learned counsel appearing for the respondent opposes any prayer for extension of the mandate of the learned arbitrator as according to counsel, the present application was filed 1 year after filing of the Statement of Defence (SoD). Counsel submits that the mandate of the tribunal hence stood terminated on 19th August, 2023 since the respondent did not consent to extending the period under section 29A(3) for 6 months. Counsel submits that the mandate of the tribunal hence expired on 19th August, 2023 and not on 30th September, 2023 as contended on behalf of the petitioner. According to counsel, the petitioner's argument presumes that the mandate expired on 30th September, 2023 by reason of the filing of the Rejoinder on 30th September, 2022 which is contrary to section 23(4) of the Act. It is also submitted that even if 30th September, 2023 is taken as completion of

the 1 year period under section 29A(1), the present application was filed on 3rd October, 2023 and hence beyond the statutory timelines. Counsel submits that the provisions of the 1996 Act would override any general exceptions under The Limitation Act or the General Clauses Act. Counsel seeks to rely on arithmetical calculations to say that the 365th day from 30th September, 2022 would be 30th September, 2023 and not 1st October, 2023.

4. The issue which falls for consideration is whether the petitioner filed the present application for extension of the mandate of the learned arbitrator within the timelines prescribed under section 29A of The Arbitration and Conciliation Act, 1996. The petitioner's case is that the timeline should be calculated from 30th September, 2022 which is the date for completion of pleadings for the purpose of section 29A(1) of the Act. The respondent however contends that the date of completion of pleadings should be taken as 20th August, 2022. The respondent relies on section 23(4) of the 1996 Act in support of this contention.

5. Determining the date of completion of pleadings is the crux of section 29A(1) of the 1996 Act and is reproduced below.

“29A. Time limit for arbitral award. – (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 endeavour 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.”

Section 29A(1) hence prescribes that for arbitrations other than international commercial arbitrations, the award must be made within a period of 12 months from the date of completion of pleadings. The provision has further been clarified by section 23(4) of the Act which speaks of the Statement of Claim (SoC) and the Defence and prescribes a timeline within which pleadings will have to be completed.

6. The respondent seeks to rely on section 23(4) to urge that the petitioner's Rejoinder will not be treated as part of the "pleadings" as mentioned in section 29A(1); and if the petitioner's Rejoinder is discounted, then the date of filing of the SoD would be the relevant date for commencement of the period contemplated under section 29A(1) of the Act. The respondent filed its SoD on 20th August, 2022.

7. Section 23(4) of the 1996 Act no doubt specifies pleadings as the SoC and the SoD. Section 23(4) was imported into section 29A(1) to prescribe the starting point of the 12 months within which the arbitrator has to make the award.

8. There are however several telling twists in the present tale emanating from the respondent's conduct. These can be summarized as;

i) The respondent failed to file its SoD within the time allowed by the learned arbitrator and filed two applications instead for extension of time for a period of 4 weeks. The respondent's second application for

extension of time for filing of the SoD contained a pleading in paragraph 9 thereof which is significant. The paragraph is reproduced below.

“It is humbly submitted that the period of limitation for completion of pleadings has not yet been completed and as such the present extension as sought innocuous in nature and non-detrimental to the arbitral process and in the interests of justice. It is humbly submitted that no prejudice would be caused to the Claimant in case the prayers made herein are granted, since, even assuming a Counter-Claim is filed by the Respondent along with its Statement of Defense, the Claimant would still have adequate and sufficient time to prepare and file its Rejoinder within the overall purview of the limitation period for completion of pleadings as prescribed in Section 23(4) of The Arbitration and Conciliation Act, 1996.”

The respondent hence admitted to the petitioner’s Rejoinder as a part of the pleadings for the purposes of section 29A(1) of the 1996 Act.

9. Having made a categorical assertion in its second application that the petitioner’s Rejoinder should be treated as part of the pleadings under sections 23(4) and 29A(1) of the Act, the respondent cannot now disown the specificity of the statement and say the reverse.

10. The respondent filed the first application for extension of time for filing of the SoD on 11th June, 2022 and a second application on 20th July, 2022 for a further period of 4 weeks.

11. It is of relevance that section 29A was incorporated in the 1996 Act with effect from 23.10.2015 to accelerate the process of non-international commercial arbitrations. The word “pleadings” in section 29A(1) has been used to give a sense of completion of the proceedings and mark the starting-time for the arbitrator to make the

award within 1 year from that date. The reference to section 23(4) is for the purpose of restricting the time for the pleadings and to prevent endless counter replies and surrejoinders. The word “pleadings” in section 29A(1) read with 23(4) should be understood in this context.

12. This Court is thus of the view that the petitioner’s Rejoinder would be taken as part of the pleadings filed by the parties, particularly in the context of the respondent’s delay in filing the SoD and the respondent’s specific statement accepting the petitioner’s Rejoinder as part of the pleadings. As would be evident from the above extract, the respondent had specifically alluded to section 23(4) in paragraph 9 of its application.

13. The date of completion of pleadings would hence be 30th September, 2022. 12 months from this date would be 30th September, 2023. Section 12(1) of The Limitation Act excludes the first day from which the period of limitation for any suit, appeal or application is to be calculated/reckoned. Hence, 1st October, which would be the first day for the time to run under section 29A(1), would get excluded.

14. Section 9 of the General Clauses Act, 1897 also helps the petitioner in this discussion since section 9 provides for a similar benefit in the matter of excluding the first day in a period of time where the word “from” is used. To clarify, section 29A(1) uses the words

“..... within the period of 12 months from the date of completion of pleadings”.

15. Therefore, 2nd October, 2023 would be the first date for computation of the period under section 29A(1) of the Act. 2nd October, 2023 was both a national holiday as well as a Court holiday. The petitioner would hence get the benefit of section 4 of The Limitation Act which provides for relaxation of the period of limitation where the prescribed period for any suit, appeal or application expires on a day when the Court is closed and further provides for filing of the application on the day when the Court reopens.

16. The parties agree that the present application was filed on the very next working day i.e. 3rd October, 2023.

17. It must be mentioned at this stage that 1st October, 2023 is recorded as the date of affirmation of the present application and not 3rd October, 2023. Hence, the entire wrangling over the dates from 30th September - 3rd October and the applicability of The Limitation Act and the General Clauses Act becomes academic.

18. Even if 19th August, 2023 is taken as the end-limit of the time envisaged under section 29A(1), as argued on behalf of the respondent, the extension of the mandate under section 29A(3) assumes relevance. Section 29A(3) allows the parties to extend the mandate under section 29A(1) for a further period with an outer limit of 6 months. Section 29A(1) read with section 29A(3) would therefore mean that the arbitrator can make the award within a period of 12 + 6 months from

the date of completion of pleadings, subject to the parties agreeing to the extension under section 29A(3).

19. There are certain admitted facts in the present case which go to show that the respondent's curious conduct continued even if 19th August, 2023 is accepted as the ceiling. The material disclosed to the Court reveals the following facts

i) The respondent sought 3 weeks extension to file its affidavit of evidence on medical ground. This is recorded in the Procedural Order No. 12 dated 26.5.2023.

ii) The claimant (petitioner before this Court) brought up the issue of extension of mandate on 28th August, 2023 to which the respondent prayed for time for the purpose of providing consent under section 29A(3). The respondent did not say that the respondent was not inclined to give its consent. The respondent did not also initiate any communication in this regard till 29th September, 2023.

iii) On 29th September, 2023, the tribunal directed the responsible officer of the respondent to appear on 30th September, 2023 to provide the consent envisaged under section 29A(3).

iv) The respondent appeared on 30th September, 2023 and stated that it cannot make any statement with regard to consent before 2nd October, 2023 since the offices of the respondent were closed till that day. No Officer of the respondent was present at the hearing on 30th September, 2023 despite the specific direction given by the tribunal on 29th

September, 2023. Significantly, even on 30th September, 2023, the respondent did not make any categorical statement that it was not inclined on giving consent under section 29A(3) or that the arbitrator's mandate had terminated as on that date.

v) The respondent communicated that it was not giving consent for extension of time under section 29A(3) of the Act only on 3rd October, 2023 after filing of the present application.

20. It would hence be clear from the respondent's conduct that the respondent deliberately led the petitioner up the garden (arbitration) path and forced the petitioner to play along with the respondent in the matter of consent under section 29A(3). The respondent kept the petitioner in a limbo from 28th August, 2023 - 3rd October, 2023 knowing fully well that the arbitrator's mandate would terminate unless consent is given under section 29A(3) of the Act.

21. Consent of the parties for extension of the mandate under section 29A(3) is an additional window for the arbitral tribunal to make the award. The timelines under section 29A cast a responsibility on the parties not only to obtain consent from the other, in the event the parties seek extension of the mandate; but also on the other party to communicate the refusal (to give consent) during the subsistence of the mandate. One party cannot be held responsible for slipping of the timelines particularly where the other party does not communicate a clear and unequivocal "no consent".

22. The petitioner took due steps for extension of the mandate before the expiry of the period prescribed under section 29A(1). The present application was filed immediately after the respondent communicated that it was not agreeable to extension under section 29A(3).

23. The uncontroverted pleadings read with the material disclosed leads to the inevitable conclusion that the respondent became wiser of the timelines of section 29A and hardened its stand only after the petitioner filed the present application. The conduct of the respondent is that of slumbering litigant who also made calculated moves to frustrate the arbitration. This is not a case of a recalcitrant litigant but of one who took every opportunity to stretch the timelines under section 29A but tightened the same when the petitioner became entangled in the mesh of dates.

24. It would be worthwhile to bear in mind that section 29A of the 1996 Act is not about the Court sitting with a calculator in one hand and a (whacking) stick in the other; but about ensuring that the parties and the arbitral tribunal do not contribute to an inordinately long arbitration process. Section 29A underlines the distinction between an indifferent litigant who allows the mandate to terminate and a vigilant litigant who makes its best effort to meet the timelines but is caught in the games played by the opponent. The present case falls in the latter category. There is nothing on record to show that the petitioner took the timelines for granted or fell off the radar during the course of arbitration.

The respondent on the other hand was the wily negotiator who sat on the fence, dangled its legs and tried to push the petitioner over the rails of section 29A.

25. In any event, much of the above discussion becomes academic in light of the application being filed on 3rd October, 2023. The only sticky period is from 19th August, 2023 (if 30th September, 2023 is not accepted as the date of expiry of mandate) to 28th August, 2023, i.e. the period when the 12 months ended and the petitioner sought extension of the mandate under section 29A(3). However, these 9 days would have to be seen within the factual prism primarily of the respondent's conduct. These 9 days also become irrelevant since 30th September, 2023 is being taken as the end-point to section 29A(1).

26. The present application was hence filed within subsistence of mandate and the petitioner has been able to make out a case for extension of the mandate under section 29A(4) of Act.

27. The judgment in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited* delivered on 6th September, 2023 in AP 328 of 2023 was on the issue whether an application for extension can be filed after termination of the arbitrator's mandate. The undisputed facts in that case were that the arbitrator's mandate had terminated long before the application was made. The respondent therein was also not a "rogue litigant". *Rohan Builders*, therefore does not help the respondent. The

Special Leave Petition from *Rohan Builders* is in any event pending before the Supreme Court.

28. There is nothing to suggest that the provisions of The Limitation Act or the General Clauses Act will not apply under section 29A of the 1996 Act particularly where 2nd October, 2023 was a declared national holiday. *Ajay Gupta v. Raju @Rajendra Singh Yadav; (2016) 14 SCC 314* was on the specific finding that the registry was not closed on 1st January, 2011. The Supreme Court relied on section 4 of The Limitation Act in that case.

29. The above reasons persuade this Court to allow the application for extension of mandate of the learned arbitrator. This is the first extension prayed for and the Court is informed that the tribunal was scheduled to fix dates for cross-examination in October, 2023. The petitioner has sought for a limited extension of 6 months for the tribunal to make the award.

30. AP 716 of 2023 is accordingly allowed and disposed of in terms of this judgment by extending the mandate for 6 months from 1st October, 2023 which will be till 31st March, 2024.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)