

M/s. Ajay Protech Pvt. Ltd. Vs. General Manager & Anr.

Civil Appeal No. _____ /2024 SLP (Civil) No. 2272 of 2024 · Supreme Court of India · 2024-11-22 · Pamidighantam Sri Narasimha · Sandeep Mehta · F2J-C-1414

Full judgment text

M/s. Ajay Protech Pvt. Ltd. Vs. General Manager & Anr.

[Civil Appeal No. _____ /2024 SLP (Civil) No. 2272 of 2024]

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. The short issue in this appeal is whether the application filed by the appellant under Section 29A(4) of the Arbitration and Conciliation Act, 1996 for extension of the mandate of the Arbitral Tribunal ought to have been allowed by the High Court. The text of Section 29A was sufficient for us to come to the conclusion that the Court has the power and jurisdiction to extend the period.

Further, in the facts and circumstances of the case, we found that there is 'sufficient cause' for the Court to extend the period for making the Award. Thus, we have allowed the appeal and extended the time till 31st December, 2024 to make the Award. In this context, we have also explained the purport of the expression sufficient cause employed in this section.

3. The brief facts are as follows. The appellant entered into a works contract with respondent no. 1. Subsequently when disputes arose, appellant sought resolution through arbitration by issuing a notice on 12.02.2018. Appellant's application under Section 11 of the Act for appointment of a sole arbitrator was allowed by the High Court by orders dated 08.02.2019 and 15.02.2019.

3.1 After the first meeting of the Arbitral Tribunal on 24.06.2019, parties were given time to complete their pleadings, which were infact completed on 09.10.2019. The statutorily stipulated 12-month period under Section 29A(1) for making the award commences from this date, and would expire on 08.10.2020. Further, as the parties can extend this period by another 6 months by mutual consent as per Section 29A(3), upon such mutual extension the time for making the award got extended till 09.04.2021. Therefore, the 18-month period, which commenced from 09.10.2019, would have naturally expired on 09.04.2021.

3.2 However, before the expiry of the said period, in fact even before the first stretch of 12 months, the nation was affected by the COVID pandemic. Taking note of this situation, this Court in Re: Cognizance for Extension of Limitation by order dated 10.01.2022 passed orders declaring that the period between 15.03.2020 and 28.02.2022 shall be excluded in computing periods of limitation under Sections 23(4) and 29(A) of the Act². The relevant portion of the said order is as under:

"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A 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 proceedings."

3.3 Returning to the arbitral proceedings, the Arbitral Tribunal framed issues on 21.11.2019 and posted the matter for arguments for December 2019 and January 2020 but was compelled to adjourn the proceedings due to the pandemic. The record reveals that the proceedings resumed in the year 2022, and in fact, the hearing was concluded on 05.05.2023. It is an admitted fact that the parties to the arbitration agreement have submitted before the Arbitral Tribunal that they would move the Court under Section 29A(4) of the Act for appropriate orders for extension of time for making the award. In

furtherance of the undertaking, an application under Section 29A(4) was filed by the appellant before the Gujarat High Court on 01.08.2023.

4. By the order dated 03.11.2023 impugned before us, the High Court dismissed the application. The High Court reasoned that the initial statutory period of 12 months expired on 08.10.2020, and the same was extended by the mutual consent of the parties till 09.04.2021. Noting that the application for extension was preferred only in August 2023, High Court held that there is no explanation for a delay of more than 2 years, 4 months in approaching it. The High Court held that the mandate of the Arbitral Tribunal stood terminated on 09.04.2021, at which point there was not even an application for extension of time pending before it. In this view of the matter, the application was found to be misconceived, and was dismissed by the order impugned before us.

5. We have heard Mr. Gaurav Agrawal, learned senior counsel for the appellant, and Mr. Vikramjit Banerjee, learned ASG for the respondents.

5.1 Relying on this Court's declaration Re: Cognizance for Extension of Limitation dated 10.01.2022 extending limitation on account of the pandemic,³ Mr. Agrawal submits that the High Court ought to have excluded the period between 15.03.2020 and 28.02.2022 while determining the date on which the Tribunal's mandate stood terminated. Further, he submits that the respondent had agreed to apply for extension of time before the Arbitral Tribunal, as is recorded in the Minutes of Arbitral Meeting dated 05.05.2023.

5.2 Mr. Vikramjit Banerjee, ASG, submits that even if the benefit of this Court's order is considered, the Tribunal's mandate expired on 31.10.2022, and there is still a nine-month delay in filing the application. Further, placing reliance on a recent decision of this Court in Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.⁴, he submits that an application under Section 29A(4) must be filed before the mandate of the Tribunal expires. It cannot be subsequently filed as the provision stipulates termination of the Tribunal's mandate on expiry of the statutory and extendable period.

6. Having heard learned senior counsel and the learned ASG, there are two issues that we must consider:

i. Whether the application for extension can be entertained if it is filed after the expiry of the Arbitral Tribunal's mandate?

ii. If yes, do the facts and circumstances warrant an extension in the present case?

7. When must an application under Section 29A(4) be filed. The first issue is no longer res integra in view of a recent decision of this Court in Rohan Builders (supra). Despite Mr. Banerjee's reliance on this decision, we find that it squarely covers the issue against him. Before dealing with this decision, it is necessary to take note of the text and wording of the relevant portion of Section 29A of the Act:

"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 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.

(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 subsection (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 subsection, 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:

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."

(emphasis supplied)

8. The effect of the provision is that if the arbitral award is not made within 12 months from when the pleadings are completed, extendable by a further 6 months by mutual consent of parties, the Tribunal's mandate will terminate, unless the court either prior or after the expiry of the period, extends it. The wording of subsection (4) clearly and explicitly enables a court to extend the Tribunal's mandate after expiry of the statutory and extendable period of 18 months.

9. This Court in Rohan Builders (supra) has held that the application for extension of time can be filed even after the expiry of the period in sub-sections (1) and (3).⁵ Even if sub-section (4) provides for the termination of the Tribunal's mandate on the expiry of the period, it recognises party autonomy to move an application before the Court for further extension.⁶ Thus, the termination of mandate under the provision is only conditional on the non-filing of an extension application, and cannot be taken to mean that the mandate cannot be extended once it expires.⁷ The relevant portion of the judgment is extracted:

"6. Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months or eighteen months, as the case may be.

The expression "either prior to or after the expiry of the period so specified" is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under subsection (1) or the extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period."

(emphasis supplied)

10. The wording of Section 29A(4) and the decision in Rohan Builders (supra) clearly answer the first issue in favour of the appellant, i.e., an application for extension can be filed either before or after the termination of the Tribunal's mandate upon expiry of the statutory and extendable period.

11. Whether extension must be granted. The next question is whether an extension of time should be granted in the present case. As per Section 29A(5), the decision to extend the time is an exercise of discretion by the court and must be done on sufficient cause being shown, and on such terms and conditions that the court deems fit.⁸ This Court, in Rohan Builders (supra), has held:

"14. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29A(3). Narrow interpretation presents an additional challenge by relegating a faultless party to a fresh reference or appointment of an arbitrator under the A&C Act, 2015, thereby impeding arbitration rather than facilitating it. The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation. A narrow interpretation will be counterproductive.

15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application.

The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can

impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced. The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal."

12. The issue before us is not whether the application under Section 29A(4) is filed within the permissible time for seeking extension, i.e., 12 months, followed by another 6 months at the consent of the parties. The real issue is whether there is a sufficient cause for the Court to extend the period for making of the award. For considering whether there is a sufficient cause or not, it is necessary to take into account the following events.

As indicated earlier, even before expiry of the period of 12 months under Section 29A(1), commencing from 09.10.2019 (date of completion of pleadings), the COVID pandemic had started. The period between 15.03.2020 and 28.02.2022 is anyways mandated to be excluded from periods of limitation.⁹ Therefore, from the date of completion of pleadings till 15.03.2020, only a period of 5 months is taken. If the remainder of the 18 months period is reckoned from 28.02.2022, the said period would expire on 31.03.2023.

In other words, the appellant would have been within the period specified under Section 29A(1) read with Section 29A(3) had it filed the application by such date. However, the problem arose because the application was filed on 01.08.2023. Really speaking, it is the period commencing from 31.03.2023 to 01.08.2023 that the Court is to take into account for considering whether there is sufficient cause to exercise the power under Section 29A(5) to extend the period.

13. In view of the above, it is clear that the reasoning adopted by the High Court in holding that there is a delay of 2 years, 4 months in filing the application is erroneous.

14. We will have to consider if there is sufficient cause for not filing the application before 31.03.2023. In the application for extension, the appellant has submitted that the reasons for extension of time are as follows:

(i) the Arbitral Tribunal proceeded with online hearings in 2022, but was required to adjourn the proceedings on several occasions at the request of the respondents' counsel as the panel from which the arbitrator was appointed had been changed.

(ii) That the dispute involved technical and legal questions, and the record of the case is bulky.

(iii) That the delay is neither attributable to the parties, nor to the Arbitral Tribunal, who have acted in a prompt and cautious manner.

(iv) The hearing is complete, and only the award needs to be declared, thereby leading to hardship to the parties if the time for making the award is not extended. On these grounds, the appellant prayed for a onemonth extension under Section 29A(4).

15. Efficiency in the conduct of arbitral proceedings is integral to the effectiveness of the dispute resolution remedy through arbitration. Efficiency is inextricably connected with expeditious conclusion of arbitral proceedings.

While the statute incorporates party autonomy even with respect to the conduct and conclusion of arbitral proceedings, there is a statutory recognition of the power of the Court to step in wherever it is necessary to ensure that the process of resolution of the dispute is taken to its logical end, if according to the Court, the circumstances so warrant. It is in this context that the Arbitration and Conciliation Act adopts the well-known language of limitation statutes and provides that the Court can extend the time if it finds that there is sufficient cause.

16. The meaning of 'sufficient cause' for extending the time to make an award must take colour from the underlying purpose of the arbitration process. The primary objective in rendering an arbitral award is to resolve disputes through the agreed dispute resolution mechanism as contracted by the parties. Therefore, 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution.

17. Having taken note of the fact that the pandemic had commenced even before the expiry of 12 months from the completion of pleadings, this Court excluding the period between 15.03.2020 to 28.02.2023 in *Re: Cognizance for Extension of Limitation* (supra), and the agreement between the parties on 05.05.2023 to seek extension of time by filing an application before the Court, we are of the opinion that there is sufficient cause for extension of time.

18. In view of the above, we allow the Civil Appeal arising out of SLP (C) No. 2272/2024 and set aside the order and judgment passed by the High Court in MCA No. 1/2023 dated 03.11.2023, and extend the period for making of the award by the Arbitral Tribunal till 31st December, 2024.

19. The parties shall bear their own costs.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Sandeep Mehta]

New Delhi;

November 22, 2024.

1 Hereinafter "the Act".

2 In re: Cognizance for Extension of Limitation, (2022) 3 SCC 117.

3 *ibid*.

4 2024 SCC OnLine SC 2494.

5 Rohan Builders (*supra*), para 6.

6 *ibid*, paras 10 and 11.

7 *ibid*, para 12.

8 *ibid*, para 15.

9 In re, Cognizance for Extension of Limitation (*supra*), para 5.4.

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