



2023:KER:39270

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 13TH DAY OF JULY 2023 / 22ND ASHADHA, 1945

OP (ATE) NO. 11 OF 2023

AGAINST THE ORDER IN AR 83/2021 OF HIGH COURT OF KERALA

PETITIONERS:

- 1 HIRAN VALIIYAKKIL LAL, S/O HEERALAL BALARAMAN, RESIDING AT VALIYAKKIL HOUSE, BRAHMAKULAM P.O., THAIKKAD, PIN - 680104, THRISSUR, KERALA.
- 2 APARNA HIRAN, D/O PRASEETH KUMAR, UK HOUSE, DUTT COMPOUND, MANKAVU, VALAYANADU- 673007, KOZHIKODE, KERALA.
- 3 SALIJA, D/O APPU, RESIDING AT UK HOUSE, DUTT COMPOUND, MANKAVU, VALAYANADU- 673007, KOZHIKODE, KERALA.
- 4 M/S HARDOLL ENTERPRISES LLP, 26/408(2) PM TOWER, NEAR SUB STATION, THAIKKAD JUNCTION, CHOWALLOORPADI, GURUVAYUR, THRISSUR, REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. HIRAN VALIIYAKKIL LAL

BY ADV SANTHOSH MATHEW
ADV VIJAY V. PAUL

RESPONDENTS:

- 1 VINEETH M.V, S/O VISWANATHAN, AGED 36 YEARS, MANATHIL HOUSE, KANDANASSERY P.O., THRISSUR-680102, KERALA.
- 2 PRAKASAN, S/O NAYARKANDIKUNHIKANNAN, RESIDING AT KALYANIKA, JYOTHI NAGAR, PUTHIYANGADI, WESTHILL, KOZHIKODE- 673005, KERALA.
- 3 K.V. SREEJA, D/O GOPALAN, RESIDING AT KALYANIKA, JYOTHI NAGAR, PUTHIYANGADI, WESTHILL, KOZHIKODE- 673005, KERALA.

BY ADV P.R.SHAJI

THIS OP (ARBITRATION TIME EXTENSION) HAVING COME UP FOR ADMISSION ON 13.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

This Original Petition (Arbitration Time Extension) is filed by the petitioners who are the respondents before the sole Arbitrator, seeking an order extending the period of the arbitration for six months.

2. Disputes having arisen between the petitioners and the respondents herein relating to and touching upon the terms of an LLP agreement executed between them, the respondents invoked the arbitration clause in the agreement, but the petitioners moved the arbitration request for appointment of a sole Arbitrator to resolve the disputes between them. This Court, by Ext. P1 order dated 06.10.2021 in AR No. 83 of 2021, appointed Mr. Justice A.M. Shaffique, a retired Judge of this Court, as the sole Arbitrator. The Arbitrator entered upon the reference on 01.11.2021. The respondents herein, filed claim statement before the Arbitrator on 22.11.2021 and the petitioners herein filed a counter claim (Ext. P6) on 24.01.2022. On 01.04.2022, the respondents/claimants filed statement of defence to the counter claim. The respondents/claimants sought for amendment of the claim statement and the same was permitted by the Arbitrator by Ext. P3 order dated



25.08.2022 on limited issues.

3. The petitioners state that, after the evidence was closed, the Arbitrator posted the matter for final hearing on 20.05.2023 and on the said day, the learned Arbitrator informed the counsel for parties that since the tenure of the Arbitrator has expired, a joint petition may be filed to continue the proceedings as further time would be required to make an award. However, the respondents/claimants filed Ext. P4 statement before the Arbitrator to record that the mandate of the Arbitrator stands terminated on expiry of 12 months from 01.04.2022.

4. 01.04.2022 is the date on which the respondents/claimants filed their statement of defence to the counter claim. It is the stand of the respondents/claimants that, by operation of Section 29 A (4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act' for short), the mandate of the Arbitrator stands terminated on expiry of 12 months from 01.04.2022. The petitioners filed Ext. P5 counter statement to Ext. P4 stating that the time limit for arbitral award under Section 29A(1) read with Section 23 (4) has to be counted from 25.08.2022, the date of allowing the application to amend the claim



statement and that the application to record termination of mandate is to delay the finalisation of the arbitration proceedings.

5. The petitioners state that the final hearing of the arbitral proceedings has already commenced after 34 hearing dates, during which period multiple interlocutory applications were disposed of and even after 01.04.2023, the proceedings continued, in which both parties participated and there is a deemed acceptance of the continued arbitration. It is contended by the petitioners that they have filed Ext. P6 counter claim which needs to be agitated and completed, or else, they would be put to grave loss. Accordingly, the petitioners seek appropriate orders extending the period of the arbitration for six months to consider and pass orders on their counter claim.

6. Upon notice from this Court, the respondents/claimants have entered appearance through counsel and filed a reply affidavit wherein they have referred to the proceedings before the Arbitrator in detail and stating that they have approached this Court by filing WP(c) No.15898 of 2023 for direction to the National Company Law Tribunal, Cochin Bench, to consider their petition for winding up and dissolution of the



LL.P and to call for the records from the arbitrator and to consider all disputes in the said proceedings.

7. Heard Sri. Santhosh Mathew, the learned counsel for the petitioners and Sri. P.R. Shaji, the learned counsel for the respondents/claimants.

8. Sri. Santhosh Mathew submits that since the learned Arbitrator is of the view that the tenure of the Tribunal has expired, he is not canvassing for the position that the time limit for arbitral award has to be counted from 25.08.2022, the date of amending the claim statement, and the mandate of the Arbitrator may be extended so that an award can be made on the counter claim filed by the petitioners. Referring to Ext. P2 consolidated copy of the proceedings of the Arbitrator, Sri. Santhosh submits that the proceedings would show that the delay has occurred at the instance of the respondents/claimants. He submits that repeated requests for adjournments were sought by the respondents/claimants stating reasons such as change of counsel, for filing counter to applications, for amending the claim statement *etc.* Sri. Santhosh would also state that the proceedings in the arbitration were also delayed due to



the outbreak of Covid 19 pandemic. Accordingly, it is contended that there is sufficient cause for extension of period for passing the arbitral award.

9. Sri. Shaji, the learned counsel for the respondents/claimants would contend that the Original Petition under Section 29A(4) and (5) of the Act is not maintainable since the application for extension of period under sub-section (4) of Section 29A can be entertained only if parties by consent had extended the period specified in sub-section (1) for making the award for a further period not exceeding six months in terms of sub-section (3). Sri. Shaji submits that, since, after the expiry of twelve months from the date of completion of pleadings, the parties have not, by consent, extended the period for making the award, the mandate of the arbitrator cannot be extended, as sub-section (4) applies only in case of extended period specified under sub-section (3). According to the learned counsel, 01.04.2022 is the date of completion of pleadings under Section 23(4) and the mandate of the Arbitrator expired on 01.04.2023 after the expiry of twelve months from the date of completion of pleadings and since the period is not further extended by the parties by



consent in terms of sub-section (3), sub-section (4) cannot be invoked to extend the mandate. Sri. Shaji would contend that sub-sections (3) and (4) of Section 29A cannot be interlinked. Sri. Shaji would further contend that the delay in completion of the arbitral proceedings was not at the instance of the respondents/claimants.

10. It is apposite to extract Sections 23 and 29A of the Act:

“23. Statements of claim and defence.—

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. (2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.”

“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.

(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.

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.”

11. Section 29A(1) provides that 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 the completion of the pleadings under Section 23(4). Sub-section (3) of Section 29A empowers parties, by consent, to extend the period specified in sub-section (1) for making the award by a further period not exceeding six months. Thereafter, if the award is not made within the period which is specified in sub-section (1) or the extended period specified in sub-section (3), the mandate of the Arbitrator shall terminate unless the Court has, in terms of sub-section (4) extended the period either prior to or after the expiry of the period so specified. Thus, in a domestic arbitration, Section 29A(1) stipulates a mandatory period of twelve months for the Arbitrator to render the arbitral award. However,



the Court is empowered to extend the period for making the award on the application of any of the parties, for sufficient cause.

12. According to Sri. Shaji, the mandate of the Arbitrator can be extended by Court under sub-section (4) only in cases where the period for passing the award by the arbitral tribunal is extended for a period not exceeding six months by the parties, by consent, as provided under sub-section (3). I cannot agree to this argument. Sub-section (4) of Section 29A deals with cases where the award is not made within a period of twelve months from the date of the completion of the pleadings and it provides that, if the award is not made within the period specified in sub-section (1), the mandate of the Arbitrator shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. The said sub-section with the use of the conjunction 'or' also applies in cases where the award is not made within the extended period not exceeding six months specified in sub-section (3). It is not as if it applies only to cases where the period is extended under sub-section (3). In the case at hand, the period of twelve months from the date of the completion of the pleadings within which time the



Arbitrator has to make an award is not extended by the parties, by consent. Therefore, the mandate of the Arbitrator stands terminated on expiry of the period of twelve months from the date of completion of pleadings. However, the sub-section (4) provides that the Court is empowered to extend the period for making the award either prior to or after the expiry of the said period. Sub-section (5) provides that such extension of period 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. Subject to the above, the time limit specified for arbitral award can be extended by Court.

13. On going through Ext. P2 proceedings before the Arbitrator, I note that the evidence in the arbitration has been completed and the final hearing has commenced and the proceedings got delayed not for reasons attributable to the Arbitrator, but due to various interlocutory applications the arbitral tribunal was called upon to consider, the adjournments sought for by parties and the situation brought out by Covid-19 pandemic. It is also not disputed by the respondents/claimants that the learned Arbitrator also requested the parties to approach the



Court for extension of the time for completion of the arbitration. This Court, therefore, finds sufficient cause, to extend the period for making the arbitral award. Accordingly, the mandate of the Arbitrator is revived and extended from 01.04.2023 till 30.09.2023. The parties shall cooperate with the learned Arbitrator to complete the proceedings.

The Original Petition is disposed of as above.

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

spc/



APPENDIX OF OP(ATE) 11/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGEMENT DATED 06.10.2021
IN ARBITRATION REQUEST NO. 83 OF 2021 FILED
BEFORE THIS HON'BLE HIGH COURT.
- Exhibit P2 TRUE COPY OF THE CONSOLIDATED COPY OF THE
ARBITRAL PROCEEDINGS TILL DATE, SHARED BY
THE ARBITRATOR VIDE EMAIL DATED 25.05.2023
- Exhibit P3 TRUE COPY OF THE ORDER DATED 25.08.2022
- Exhibit P4 TRUE COPY OF THE LETTER DATED 22.05.2023.
- Exhibit P5 TRUE COPY OF THE COUNTER AFFIDAVIT FILED
BEFORE THE LEARNED ARBITRAL TRIBUNAL.
- Exhibit P6 TRUE COPY OF THE COPY OF THE COUNTERCLAIM.