
(2023) 01 OHC CK 0016
In the Orissa High Court
Case No : RVWPET No.278 Of 2022

M/s. Hotel Sea Point Pvt. Ltd.,	Vs	APPELLANT
Puri M/s. Blueline Resorts Pvt. Ltd., Khurda		RESPONDENT

Date of Decision : 09-01-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14, 29A(5)

Citation : (2023) 01 OHC CK 0016

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Saurendra Rautray, G. Samantray, Avijit Pal, T. Patnaik

Final Decision : Dismissed

Judgement

Arindam Sinha, J

1. Mr. Routray, learned advocate appears on behalf of review applicant, who was opposite party in the writ petition. It was disposed of by order dated 6th July, 2022. He submits, by said order there was impliedly extension of mandate, which could not have been directed in view of judgment dated 5th January, 2010 of the Supreme Court in, inter alia, Civil Appeal no.8 of 2010 (NBCC Ltd. v. J.G. Engineering Pvt. Ltd.) .
2. He submits, in NBCC Ltd. (supra) the facts were similar. There had been approach to Court under section 14 in Arbitration and Conciliation Act, 1996. Substitute arbitrator had been appointed with time fixed to conclude the reference six months therefrom. The reference could not be concluded within the time as had been directed and accepted by the parties. The award was passed thereafter. One of the parties again approached the Court seeking declaration of termination of mandate and appointment of yet another substitute arbitrator. That was done. The other party was aggrieved. Its grievance ultimately reached the Supreme Court to result in the judgment.
3. Mr. Patnaik led by Mr. Pal, learned advocates appear on behalf of writ

petitioner. Mr. Patnaik submits, there is no ground for review of said order dated 6th July, 2022.

4. Paragraph-7 from order dated 6th July, 2022 is reproduced below.

"7. The Arbitration and Conciliation Act, 1996, when enacted, referred to as the principal Act as above, did not have a provision limiting the mandate by time. It is clear, parties have not agreed that provisions in the amendment Act of 2015 would be made applicable to the reference, commenced much prior thereto. In the circumstances, it cannot be said that mandate of the tribunal was limited by time. It therefore appears, the petition made under section 29A(5) is misconceived. Since the Court below had dismissed the same on finding it otherwise not maintainable, the result of impugned order does not need interference. However, it is made clear that the contentions of earlier extension granted, it having become final and the petition thereafter made under section 29A(5), do not need adjudication since, as aforesaid, the petition itself is misconceived. The tribunal is expected to expeditiously deal with and conclude the reference, there being no limit by time on the mandate."

It will appear therefrom that view taken by this Bench was that where the reference was governed by the unamended Act not having a provision limiting the time for conclusion of it, the application under inserted amended provision section 29-A(5) was misconceived. Hence, further view taken was the arbitrator had mandate and was accordingly directed to expeditiously conclude the reference. On query from Court, it transpires that award has been published and also put in execution.

5. In NBCC Ltd. (supra) finding by the Supreme Court was that both parties had accepted initial substitute arbitrator being appointed with the condition for said arbitrator to conclude the reference within six months therefrom i.e. by 27th March, 2005. The substitute arbitrator could not conclude the reference by passing award within that time. An award was passed subsequent thereto. As aforesaid, one of the parties again approached the High Court for declaration of termination of mandate of said arbitrator and appointment of yet another substitute arbitrator. The High Court declared termination and appointed yet another substitute arbitrator. It is against this that the other party was ultimately before the Supreme Court, which, in those facts, said that appellant is estopped from raising any objection against imposition of the time limit as had been done by the Court on the first substitution. In the writ petition decided by the order under review, there was no termination of mandate declared. Instead what was said was that the reference was to be governed by the unamended Act not having set any time limit. Review applicant before this Bench, in opposing the writ petition, had contended that when time fixed by consent on the earlier application had expired, the second application was not maintainable. There was no declaration of termination of mandate and appointment of substitute arbitrator obtained by applicant to now seek application of NBCC Ltd. (supra) in the facts of this case. The resistance was and still is on ground of review

applicant having filed suit. In that view of things and there being no provision in the Act for termination of mandate to be declared on basis of a party having had filed suit subsequently, the view was taken that there being no time limit provided in the amended Act, the mandate could not be said to have been terminated and for the arbitrator to proceed to expeditiously conclude the reference.

6. For reasons given above, no merit is found in the review application. It is dismissed.

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