

Application under Section 29A of the Arbitration Act lies only before the Court competent to appoint arbitrator

INTRODUCTION:

The legislature introduced under Section 29A to the Arbitration and Conciliation Act, 1996 ("the Act") vide the Amendment Act 3 of 2016. The aforesaid amendment came into force with effect from 23.10.2015. Section 29A of the Act further amended in the year 2019. The net effect of the above referred two amendments is that in the matter of arbitrations, other than International Commercial Arbitration, a time limit for conclusion of arbitration proceedings was introduced. Section 29A of the Act, as it stands today, provides that an arbitral tribunal has to publish the award within a period of twelve months from the date of completion of pleadings under Section 29A.

As per Section 23(4), the pleading which comprises of statement of claim and defence are mandated to be completed within a period of six months from the date the arbitrator, or all the arbitrators received notice, in writing, of their appointments. It is also provided under Section 29A(3) that parties by their consent, can extend the period of making the award for a further period not exceeding six months. If the award is not made within the period of one and half years, the mandate of the tribunal shall terminate. However, power has been vested in the "Court" to extend the period. One of the important questions that arise is as to which is Court competent to enlarge time for making of the award by the arbitral tribunal in terms of Section 29A (4). This question has been answered by the Hon'ble Delhi High Court in case of **DDA Vs. M/s Tara Chand Sumit Construction Co.**¹ decided on 12.05.2020. After taking note of the relevant statutory provisions as well as the judicial pronouncements cited by the parties, the Hon'ble High Court held that the expression "Court" as used in Section 29A has to be read by taking resort to contextual meaning of the said term as provided in Section 2(1) of the Act, which begins with expression "*in this part unless the context otherwise requires*". The Hon'ble High Court held that when one looks at the provision of Section 29A (4), it is quite plausible to conclude that the power to extend the mandate of the arbitrator would lie with the principal civil court. However, on a careful analysis, such an interpretation would lead to complication and would be in teeth of the powers of the "Court" under Section 11 of the Act. The Hon'ble Delhi High Court referred to the judgments of Hon'ble Gujarat High Court in the matter of **Nilesh Ramanbhai Patel and Ors. v. Bhanubhai Ramanbhai**

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Patel and Ors.² as well as of the Hon'ble Bombay High Court in the case of **Cabra Instalaciones Y Servicios, S.A. v. Maharashtra State Electricity Distribution Company Ltd.**³, for concluding that an application under Section 29A of the Act seeking extension of mandate of the arbitrator would lie only before the Court which has power to appoint the arbitrator under Section 11 of the Act and not with the Civil Court.

For arriving at the aforesaid conclusion, the Hon'ble Delhi High Court held that it would not be conducive for a civil court to entertain an application under Section 29A inasmuch as the said provision enables the court extending the time for substitute the arbitrator. Therefore, if the arbitrator had been appointed by the high court, the high court alone, and not the district court, will have competence to substitute the arbitrator so appointed while exercising powers under Section 29A. Similarly, in an international commercial arbitration where the power to appoint arbitrator vests with the Hon'ble Apex Court, high courts would not be competent to substitute the arbitrator so appointed by the Supreme Court.

Accordingly, it was held that an application under Section 29A would lie only with the court which has power to appoint arbitrator. This finding of the high court clarifies the situation beyond any doubt that in no case an application under Section 29A can lie before the district court as it has no power of appointing the arbitrator.

Conclusion:

While the aforesaid judgment does clarify the situation regarding competence of the Court to decide the application under Section 29A, however, by the amendment to Section 29A, which was brought on Statute Book on 30.08.2019, the rigor of Section 29A have been confined to apply only domestic arbitrations and in case of international commercial arbitration, the timelines provided under Section 29A would not apply strictly. Therefore, in international commercial arbitration the question of enlargement of time for making of award by the arbitral tribunal would not arise in cases where arbitration clauses have been invoked on or after 30.08.2019.

It may therefore be easy to conclude that an application under Section 29A would lie only before high courts and never before the district court. In case of international commercial arbitrations having commence before 30.08.2019 Application under Section 29A, if any, would lie before Apex Court.

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² Misc. Civil Application (O.J.) No. 1 of 2018 in Petition under Arbitration Act No.56 of 2016, decided on 14.09.2018

³ 2019 SCC Online Bom 1437