

Mangal Chand and ors vs. LAC NHAI and ors.

Arb. Case No. 799 of 2023

10.01.2025 Present: Mr. Rohan Thakur, Advocate, vice Mr. Maan Singh, Advocate, for the petitioners.

Mr. Lokender Kutlehria, Additional Advocate General, for the respondents No.1 and 3-State.

Ms. Shreya Chauhan, Advocate, for respondent No.2.

OMP No. 1197 of 2024

The applicant/petitioner has filed an application under Section 151 of CPC for extension of time to comply with the order dated 30.10.2023 passed in arbitration case No. 799 of 2023. It has been asserted that the applicant/petitioner filed a petition before the Court seeking an extension of time to enable the arbitrator to conclude the arbitration proceedings in reference No. 1376 of 2017. This petition was disposed of by this Court on 30.10.2023 by allowing the extension of time enabling the learned arbitrator to conclude the proceedings within six months. The parties were directed to remain present before the learned Arbitrator on 31.10.2023. Learned counsel representing the petitioner intimated this fact to the learned counsel appearing before the learned Arbitrator. He asked the learned counsel to download the copy of the order but he failed to do so. Learned Arbitrator could not

take up the matter in the absence of the order extending the time and the time granted by this Court stood expired. Hence, the application for an extension of time.

2. No reply was filed.

3. I have heard Mr. Rohan Thakur, Advocate vice Mr. Maan Singh, learned counsel for the petitioner, Mr. Lokender Kutlehria, learned Additional Advocate General for respondents No.1 & 3/state and Ms. Shreya Chauhan, learned counsel for respondent No.2/NHAI.

4. Mr. Rohan Thakur, learned vice counsel for the petitioner submits that the order was conveyed to the learned counsel representing the petitioner before the learned Arbitrator, however, he failed to download the order and appear before the learned Arbitrator. Since the order was not conveyed to the learned Arbitrator, he could not proceed further in the matter. The other cases have already been decided; therefore, he prayed that the present application be allowed and the time be extended.

5. Ms. Shreya Chauhan, learned counsel for respondent No.2/NHAI submitted that the present application under Section 151 CPC is not maintainable as a specific provision exists under Section 29 (A) (4) of the Arbitration and Conciliation Act. The petitioners were negligent in not appearing before the learned Arbitrator

and there is no sufficient cause for extending the period. NHAI would be forced to deposit the interest for an extended period. Therefore, she prayed that the present application be dismissed.

6. Mr. Lokender Kutlheria, learned Additional Advocate General for the respondents No.1 and 3/State adopted the submissions of Ms. Shreya Chauhan and prayed that the present application be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. It is true that there is a specific provision under Section 29A (4) of the Arbitration and Conciliation Act for extending the period for completing the arbitration proceedings. It was laid down by the Hon'ble Supreme Court in *My Palace Mutually Aided Coop. Society v. B. Mahesh*, 2022 SCC OnLine SC 1063 that the inherent power under section 151 of CPC cannot be exercised when a specific provision exists. It was observed:

“28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.”

9. Hence, the application under Section 151 CPC would not be maintainable when specific provision under Section 29 A (4) of the Arbitration and Conciliation Act exists to extend the time and the submission of Ms. Shreya Chauhan, learned counsel for respondent No.2/NHAI has to be accepted as correct that the application should have been filed under Section 29 A (4) of the Arbitration and Conciliation Act and not under Section 151 of CPC.

10. However, this will not make much difference. It was laid down by the Hon'ble Supreme Court in *Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah*, (2019) 9 SCC 533: (2019) 4 SCC (Civ) 638: 2019 SCC OnLine SC 1308 that mere mentioning of an incorrect provision of law is not fatal if the power to pass an order is available with the Court. It was observed:

8. It is well-settled law that mere non- mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court.

11. A similar view was taken by the Delhi High Court in *Vijay Kumar Nagpal v. Parveen Kumar Nagpal*, (2022) 1 HCC (Del) 25: 2022 SCC OnLine Del 4 wherein it was observed:

11. Regarding the objection raised by the learned counsel for the defendant that the present application is filed under Section 151CPC instead of under Order 9CPC. However, under Section 151CPC,

this Court has inherent power to consider an application wherein a wrong provision is mentioned. It cannot be an obstacle for granting the relief as made out from the contents of the application as held in Gotham Entertainment Group LLC case [*Gotham Entertainment Group LLC v. Diamond Comics (P) Ltd.*, 2009 SCC OnLine Del 4009].

12. It is trite that quoting a wrong statutory provision does not create a bar and stand in the way of considering the application, as held in *Nitish Arora case* [*Nitish Arora v. State of Delhi*, 2007 SCC OnLine Del 142: (2007) 141 DLT 21]. Thus, on this aspect, this Court is not convinced by the contention of learned counsel for the defendant.

13. Undisputedly, the applicant plaintiff filed the present suit for partition in which he is claiming a 60% share in the suit property and recovery of Rs 86,50,000 with interest thereon, which is the subject matter of trial. However, at this stage, the claim cannot be considered as false and based on a concocted story.

12. Thus, the application cannot be dismissed on the ground that Section 151 of CPC was mentioned instead of Section 29 A (4) of the Arbitration and Conciliation Act.

13. The plea taken by the applicant/petitioner are duly supported by an affidavit. It is true that the learned counsel representing the petitioner before the learned Arbitrator was negligent because he should have downloaded the order passed by this Court extending the mandate of an Arbitrator. Similarly, the learned counsel for the petitioners appearing before this Court should also have sent a certified copy using registered post or the speed post, however, the petitioners cannot be penalized for the fault of his counsel. It was laid down by this Court in *Rajinder Kumar vs. National Highways Authority of India*

2024 (1) HimLR 583 that a landowner whose land was acquired cannot be left remediless. It was observed:

“12. ... both the parties are legally bound to comply with the provisions of the 1956 Act and as NHAI is legally bound to pay the land owner an adequate amount for the purpose of the acquisition of his land, this appeal is disposed of by remanding the matter back to the learned Arbitrator for adjudication afresh and by extending the time, as agreed, for pronouncing of a fresh award by 30.06.2024.”

14. The land of the applicants/petitioner was acquired by NHAI for the construction of the road. The applicant/petitioner has a constitutional right under Article 300 A of the Constitution of India to protect his property and the payment of adequate compensation. This right should not be denied due to the fault of the learned counsel.

15. The grievance of Ms. Shreya Chauhan, learned counsel for the NHAI that interest would have to be paid for the period when the proceedings were not been conducted by the learned Arbitrator appears to be justified and it would be open to NHAI to take this plea before learned Arbitrator, who shall decide the same on merit as per the law and the relevant provisions applicable to the present case.

16. Consequently, the present application is allowed and the learned Arbitrator is granted 6 months to complete the arbitration proceedings from the date the

parties appear before the learned Arbitrator. The parties through their respective learned counsel are directed to appear before the learned Arbitrator on **28.01.2025**.

17. A copy of this order be also sent to the learned Arbitrator for information.

18. Parties are permitted to produce a copy of this order, downloaded from the webpage of the High Court of Himachal Pradesh before the authorities concerned, and the said authorities shall not insist on the production of a certified copy but if required, may verify passing of the order from Website of the High Court.

(Rakesh Kainthla)
Judge

January 10th 2025
(saurav pathania)