

2025 LiveLaw (SC) 1190

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJAY KUMAR; J., ALOK ARADHE; J.

SLP (C) No.13759, 13779 of 2025; DECEMBER 10, 2025

MOHAN LAL FATEHPURIA *versus* M/S BHARAT TEXTILES & ORS.

Arbitration and Conciliation Act, 1996; Section 29A(4) & 29A(6) - Termination of Mandate and Substitution of Arbitrator – Held, upon the expiry of the initial or extended period for making an arbitral award, the arbitrator cannot proceed with the proceedings as the mandate terminates by operation of law, making the arbitrator *functus officio* - While this termination is not "absolute" and is subject to court-ordered extensions under Section 29A(4), the court is empowered and obligated under Section 29A(6) to substitute the arbitrator to effectuate the object of the Act, which is the expeditious resolution of disputes - The power of substitution under Section 29A(6) is a separate remedy from those available under Sections 14 and 15 - In the present case, where the mandate expired on 28.02.2023 and the arbitrator failed to pass an award, the High Court erred in merely granting an extension without considering that the mandate had ceased to exist; thus, **substitution was warranted - Appeal allowed. [*Relied on Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd. - 2024 SCC OnLine SC 2494; Paras 9-13*]**

For Petitioner(s) Mr. Pradeep Aggarwal, Adv. Mr. Lal Pratap Singh, Adv. Mr. Umesh Pratap Singh, Adv. Mr. Arjun Aggarwal, AOR Mr. Sahil Gupta, Adv. Mr. Vishal Singh, Adv. Mr. Aman Kumar, Adv.

For Respondent(s) Mr. S. C. Singhal, Adv. Mr. Padam Kant Saxena, Adv. Ms. Megha Gaur, Adv. Mr. Parmanand Gaur, AOR.

J U D G M E N T

ALOK ARADHE, J.

1. Leave granted.
2. These appeals are filed against an order dated 22.04.2025 by Delhi High Court by which it has declined substitution of a sole arbitrator but has extended his mandate under Section 29A(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'Act') for a further period of four months.

FACTS

3. The appellants who are husband and wife, along with respondent nos. 2 to 4 executed a partnership deed dated 18.05.1992 which contained an arbitration clause. M/s. Bharat Textiles namely, respondent no.1, was registered on 05.01.2007 as a partnership firm. Upon disputes having arisen, the High Court by a common order dated 13.03.2020, passed in two arbitration petitions filed by the appellants, appointed Mr. Anjum Javed, Advocate as a sole arbitrator. The High Court directed that a sole arbitrator shall be entitled to fee as per the Fourth Schedule to the Act.

4. The sole arbitrator entered the reference on 20.05.2020. He thereafter issued various directions on 03.06.2020, 21.10.2020, 09.01.2021 and on 15.06.2021 and directed the parties to deposit various amounts towards administrative expenses. The respondent nos.2 and 3 questioned the action of the sole arbitrator in demanding administrative expenses, in their applications filed under Sections 14 and 15 of the Act, seeking termination of the mandate of the sole arbitrator. The said applications were dismissed by a common order dated 28.01.2022, passed by the High Court, *inter alia* on

the ground that all the expenses are required to be paid on actuals. It was further held, that, it would be open for respondent nos. 2 and 3 to approach the Arbitral Tribunal, to account for administrative expenses. It was also held that the sole arbitrator is neither *de jure* nor *de facto* ineligible to act as an arbitrator. The petitions were dismissed.

5. The sole arbitrator issued directions on 09.07.2022, 06.01.2023 and on 14.08.2023 requiring the parties to deposit the administrative expenses. The appellants on 31.08.2023 sought time, in arbitral proceeding, to move an application before the High Court under Section 29A(4) of the Act. Thereupon, the sole arbitrator on 31.08.2023 adjourned the proceeding *sine die*.

6. The appellants, filed petitions under Section 29A(6) of the Act seeking substitution of the sole arbitrator and extension of tenure, for the substitute arbitrator. The High Court, by an order dated 22.04.2025, *inter alia* held that the fee must be charged by the sole arbitrator strictly in accordance with Fourth Schedule and administrative expenses only on actuals with disclosure to the parties. The substitution of the sole arbitrator was declined and time was extended to conclude the arbitral proceeding within a period of four months. The petitions were partly allowed. In the aforesaid factual background, these appeals arise for our consideration.

SUBMISSIONS

7. Learned counsel for the appellant submitted that the sole arbitrator acted in contravention of the initial order of appointment dated 13.03.2020 and charged the fee and expenses in excess of Fourth Schedule. It is further submitted that the sole arbitrator also violated the directions issued in the order dated 28.01.2022 passed by the High Court. It is contended that the High Court ought to have appreciated that the power of substitution of an arbitrator is wider under Section 29A(6) of the Act and is not restricted to the grounds in Sections 14 and 15 of the Act.

8. Per contra, learned counsel for the respondents submitted that no ground is made out for substitution of the sole arbitrator. It is further submitted that since the petitions filed by the respondents under Sections 14 and 15 of the Act have been rejected on 24.01.2022, therefore, a substitute arbitrator under Section 29A(6) of the Act, cannot be appointed. Alternatively, it is contended that, in case this Court directs substitution of an arbitrator, a former judge be appointed, as the sole arbitrator.

ANALYSIS

9. We have considered the rival submissions made by both sides and have perused the record. The relevant statutory provision namely, Section 29A was inserted by Amendment Act No.3 of 2016 and was amended by Act No.33 of 2019. Section 29A was inserted in the Act, due to widespread criticism of delay in conducting the arbitration proceedings, as the delay is against the avowed object of the Act i.e., speedy resolution of the dispute. Section 29A aims to ensure time bound disposal of arbitration proceeding, which is in consonance with the object of the Act. Section 29A is extracted below for the facility of reference: -

“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 subsection (4) of section 23.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months on 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 subsection (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 subsection (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.

10. Section 29A of the Act has been held to be remedial in nature and is made applicable to all pending arbitral proceedings as on 30.08.2019¹. Section 29A(1) mandates that an award has to be made within a period of twelve months from the date of completion of pleadings under Section 23(4) of the Act. 29A(3) enables the parties by consent to extend the period specified in sub-section (1) for making the award for a further period not exceeding six months. Section 29A(4) mandates that if the award is not made within the period mentioned in sub-section (1) or the extended period specified in sub-section (3), 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. Section 29A(6) provides that while extending the period referred to in subsection (4), the court may substitute one or all of the Arbitrators and if one or all of the Arbitrators are substituted, the arbitral proceeding shall continue from the stage already reached.

¹ TATA SONS PVT. LIMITED v. SIVA INDUSTRIES & HOLDINGS LTD. & ORS. (2023) 5 SCC 421

11. The undisputed facts which emerge from the record before us, are that, the sole Arbitrator entered the reference on 20.05.2020 and directed the parties to file the statements of claim and defence. The period of six months prescribed under Section 23(4) of the Act, for completion of pleadings expired on 19.11.2020. The period from 15.03.2020 till 28.02.2022 deserves to be excluded on account of pandemic caused by Covid-19 virus². In view of mandate contained in Section 29A(1) of the Act, the sole Arbitrator was under an obligation to pass an award within a period of one year from 01.03.2022, i.e. on or before 28.02.2023. However, the sole Arbitrator failed to do so. The parties did not apply for extension of period to pass an award. The sole arbitrator, in view of mandate contained in Section 29A(4) became *functus officio*.

12. We are conscious of the fact that a two Judge Bench of this Court³ has interpreted the word 'terminate' in Section 29A(4), while dealing with an issue whether an application for extension of time for passing the arbitral award is maintainable even after the expiry of twelve months or extended six month period, as the case may be. It has been held that on expiry of the initial period of six month and extended period of six months, the Arbitral Tribunal becomes *functus officio* but not in absolute terms. It has further been held that the termination of arbitral mandate is conditional upon the filing of an application for extension and cannot be treated termination *stricto sensu*. It has also been held that the legislature by using the word 'terminate' intends to affirm the principle of party autonomy. However, the fact remains that on expiry of initial period or extended period, the arbitrator cannot proceed with the arbitration proceeding and his mandate terminates, subject to an order which may be passed by the Court in a proceeding under Section 29A(4) of the Act.

13. An arbitrator or an Arbitral Tribunal is not always statutory. It is, ordinarily, a forum chosen by the parties for resolution of their disputes. An Arbitral Tribunal with the consent of the parties decides their disputes. In the instant case, as stated supra, the mandate of the sole Arbitrator had terminated on 28.02.2023. When mandate of arbitrator has expired, his continuation is impermissible. Section 29A(6) empowers and obligates the Court to substitute the Arbitrator. In so far as submission of the respondents, that, since the petition filed under Sections 14 and 15 of the Act was rejected on 24.01.2022 by the High Court is concerned, suffice it to say that the Act provides separate remedies in the circumstances mentioned in Sections 14, 15 and 29A of the Act. In any case, on 24.01.2022, the mandate of the sole arbitrator was not terminated. Therefore, the order dated 24.01.2022 does not have any impact on the decision of the petition under Section 29A of the Act filed by the appellants. The substitution of a sole arbitrator is warranted, when his mandate ceases to exist, to effectuate the object of the Act, which mandates expeditious resolution of the dispute. In view of the statutory scheme and undisputed factual position, we are satisfied that the case warranted the exercise of jurisdiction under Section 29A(6) of the Act. The High Court erred in granting an extension when the mandate of the sole arbitrator had ceased to exist.

CONCLUSION

14. For the aforementioned reasons, the impugned order dated 22.04.2025 is quashed and set aside. The mandate of sole arbitrator Mr. Anjum Javed stands terminated by operation of law. Mr. Justice Najmi Waziri, Former Judge of Delhi High Court is appointed as the substituted sole arbitrator. The arbitral proceeding shall resume from the stage

² COGNIZANCE FOR EXTENSION OF LIMITATION, IN RE (2022) 3 SCC 117

³ ROHAN BUILDERS (INDIA) PVT. LTD. v. BERGER PAINTS INDIA LTD. – 2024 SCC OnLine SC 2494

already attained and be concluded within six months from the date of receipt of a copy of this order.

15. In the result, appeals are allowed. There shall be no order as to costs.

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