

PBRO010032282022



**IN THE COURT OF HARISH ANAND,
ADDITIONAL DISTRICT JUDGE, RUPNAGAR
(UID No.0139)**

**ARB No.28 of 21.07.2022
CNR No.PBRO01-003228-2022
Date of decision: 03.08.2023**

Raj Kumar son of Budh Ram through his LR:-

1. Dev Raj aged about 56 year son of Raj Kumar
2. Manohar Lal aged about 54 years son of Raj Kumar
3. Shiv Kumar son of Raj Kumar

All residents of Village Rangilpur Tehsil and District
Rupnagar.

.....Applicants

Versus

1. The National Highways Authority of India through its Project Director, Project Implementation Unit, Chandigarh, Bays No.35-38, Sector 4, Panchkula-134112.
2. The Sub Divisional Magistrate, Rupnagar District Rupnagar exercising the powers of Competent Authority under the National Highways Act, 1956.
3. The Divisional Commissioner, Division Patiala now Arbitrator Commissioner Division, Rupnagar exercising the power of Arbitrator under National Highway Act, 1956 (As amended upto date).

.....Respondents

**Application to extend the period of
Arbitrator to pass the Award in case**

**No.MA-52/2016 under the provisions of the
Arbitration and Conciliation Act.**

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Present: Sh. SS Saini, counsel for the applicants
Sh. Neeraj Sharma, counsel for respondent
No.1.
Respondent No.2 ex parte
None for respondent No.3

ORDER :

The applicants by way of filing this application sought for extension of time regarding arbitration proceedings for passing the award by the Arbitrator.

2. The brief facts are that the land of the applicants situated in Village Rangilpur Tehsil and District Rupnagar was acquired by respondents for widening National Highway 205 situated in the revenue estate of Village Rangilpur Tehsil and District Rupnagar. The applicant filed petition in case No.MA-52/2016 before respondent No.3 to enhance the amount of compensation of land as per market value which has not been decided within the stipulated period under the provisions of Arbitration and Conciliation Act. Arbitrator has mentioned in his order that the arbitration proceedings were not completed due to their busy schedule. This fact was mentioned by respondent No.3 in the Order dated 03.11.2020 which reads as under:-

“due to administrative exigencies, the Divisional Commissioners have been regularly transferred. This inequitably, had effect of pushing the time for completing the said arbitration, and therefore some matters (such as this) pending before the Arbitrator could not be adjudicated in the mandate period”.

There is no fault of the applicants. The Arbitrator has not decided the matter within stipulated period. On these premises, it has been prayed that period for Arbitration proceedings for passing the award in this case may kindly be extended.

3. Upon notice, respondent No.1-National Highways contested the claim of the applicants inter alia pleading that it is not maintainable. It has been pleaded that there is no sufficient ground for the extension of time as per law under Section 29A sub-section (5) of the Arbitration Act, 1996 law mandate that there has to be sufficient cause in order to grant the extension of time as prayed for in the present application. The respondents reproduced the Section 29A sub-section (5) of the Arbitration Act to the effect that ‘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’.

It is pleaded that respondent No.1 is an authority established under the National Highways Authority of India Act, 1988 and is performing an essential governmental function of national importance. The Central Exchequer cannot be burdened with any interest liability on account of the delay caused by the petitioner. The rest of the averments were denied and a prayer for dismissal of the application was made.

4. I have considered the respective contentions of the learned counsel for the parties and have gone through the record.

5. Applicants have sought extension of period of passing the arbitration award by the Arbitrator qua acquired land for widening the National Highway situated in the revenue estate of Village Rangilpur Tehsil and District Rupnagar on the ground that due to transfer of Arbitrator-cum-Divisional Commissioners number of times during the proceedings, the Arbitrator could not pass the award within the stipulated period of one year as provided under the Arbitration and conciliation Act.

6. Section 29A of the Arbitration and Conciliation Act, 1996 deals with the period provided to the

Arbitrator for passing the award. It runs as under:-

“29A. (1) The award shall be made within a period of twelve months from the date of the arbitral tribunal enters upon the reference.

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.

(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 parties may agree.

(3) The parties may, by consent, extended 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 arbitrators (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 for 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.

(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 the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and materiel 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 the material.

(7) In the event of arbitrator (s) 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 to 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 endeavor 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.'

7. Section 6 of the Arbitration and Conciliation (Amendment) Act, 2019 read as under:

'6. In Section 29A of the principal Act___(a) for sub-section(1) the following sub-section shall be substituted, namely.

Amendment of section 29A (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 competition 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 endeavour may be made to dispose of the matter within a period twelve months from the date of completion of pleadings under sub-section (4), of 23”

(b) in sub-section (4) after the proviso, the following provisos shall be interested, namely: “ 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.”

8. As per bare provisions of the Act, it is settled law that if the award is not passed by the Arbitrator within the period of 12 months specified in Sub Section (1) or within the extended period provided under 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. A perusal of the record of Arbitrator shows that the petition for the

enhancement of the award was filed by applicants before the Commissioner, Patiala Division, Patiala exercising the power of Arbitrator on 05.09.2016. The Arbitrator in his order dated 03.11.2020 mentioned that due to administrative exigencies, the Divisional Commissioners have been regularly transferred. This, inevitably, had effect of pushing the time for completing the said arbitration, and therefore some matters (such as this) pending before the Arbitrator could not be adjudicated in the mandate period. According to Section 29 A of Arbitration and Conciliation Act if the reference is not decided by Arbitrator within 18 months the mandate of the Arbitrator stands terminated and as such without getting the order of the concerned court for extension of time the said cases cannot be heard and as such are ordered to be consigned to the record room. The award has not been passed by the Arbitrator due to transfers of Arbitrators-cum-commissioners of Patiala, Division, Patiala time and again.

9. Admittedly, the land was compulsorily acquired for widening the National Highway. It was held by the learned Arbitrator-cum-Commissioner, Patiala Division, Patiala that the mandate of Arbitrator to decide the present case was seemingly expired and the parties were directed to approach the Principal Civil Court of original

jurisdiction in the district to seek extension of time for completing the aforesaid arbitration process as provided under the Arbitration Act. In view of the order of Arbitrator and mandate of law, present application seeking extension of period under Section 29A of the Act is maintainable. The period of Arbitration proceedings to pass the award in this case after hearing both the parties is required to be extended. Being so, the application filed by the applicants for extension of period of Arbitration for making the award in Case No.MA-52/2016 is allowed and the period of Arbitration is extended till 04.09.2023 with the following terms and directions:

- (i) That the Arbitral Tribunal shall conclude the proceedings by 04.09.2023 and made the award in accordance with law by granting short adjournments.
- (ii) That the plea of the respondents regarding not to impose the interest liability on the Central Exchequer for the period of any delay allegedly attributed to the petitioner, if raised, shall be considered by the Arbitrator Tribunal at the time of passing the award.

10. In view of the above discussion, the application disposed of accordingly. Parties through their counsel are directed to appear before the Arbitrator on 10.08.2023. Record of the Arbitral Tribunal be returned

immediately along with the copy of this order. File be
consigned to Record Room.

Announced
Dated:- 03.08.2023

(Harish Anand)
Additional District Judge,
Rupnagar. (UID No.0139)

Deepak Kumar, Stenographer-II

Raj Kumar through LRs Vs. NHAI and others

Present: Sh. SS Saini, counsel for the applicants
Sh. Neeraj Sharma, counsel for respondent No.1.
Respondents No.2 and 3 ex parte

Case called several times since morning but none has appeared on behalf of respondent No.3. Accordingly, respondent No.3 is proceeded against ex parte.

Arguments heard. Vide separate detailed order of even date; the application filed by the applicants for extension of period of Arbitration for making the Award in case bearing No.MA-52/2016 is allowed and the period of arbitration is extended as detailed therein.

Parties through their counsel are directed to appear before the Arbitrator on 10.08.2023. Record of the Arbitral Tribunal be returned immediately along with the copy of this order. File be consigned to Record Room.

Announced

Dated:- 03.08.2023

(Harish Anand)
Additional District Judge,
Rupnagar. (UID No.0139)