2024 SCC OnLine Cal 5386

In the High Court of Calcutta

(BEFORE SHAMPA SARKAR, J.)

Yashovardhan Sinha HUF and Another

Versus

Satyatej Vyapaar Pvt. Ltd.

C.O. No. 4125 of 2023

Decided on February 19, 2024

Advocates who appeared in this case :

Mr. S. N. Mookherjee, Ld. Senior Advocate
Mr. Aniruddha Chatterjee,
Ms. Nusrat Hassan,
Ms. Ankita Singhania
Mr. Piyush Agarwal
Mr. Sahil Menon,
Ms. Shrivalli Kajaria,
Mr. Debyojyoti Das,
Mr. Naman Chakraborty … for the Petitioners.
Mr. Anirban Ray
Mr. Rajarshi Dutta
Mr. Akash Agarwal
Ms. Ankita Agrahari
Mr. Kritin Saraf … for the Opposite Party.

The Judgment of the Court was delivered by

SHAMPA SARKAR, J.:— The revisional application has been filed challenging the order dated November 8, 2023, passed in arbitration dispute case No. 4 of 2022. By the said order, the learned Arbitrator refused to record termination of his mandate.

2. According to the petitioners, the mandate of the arbitrator automatically terminated on March 16, 2023, upon application of Section 23(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to of the said Act).

3. By an order of the High Court dated August 24, 2022, the learned arbitrator was appointed. On September 16, 2022, the learned Arbitrator was intimated about the order of the High Court. The Tribunal was, thus, constituted. The first meeting was fixed on September 19, 2022. The petitioners prayed for an adjournment. On September 29, 2022, another adjournment was prayed for by the petitioners on the

ground that an SLP was pending before the Hon'ble Apex Court.

4. On November 1, 2022, the petitioners filed an application for dismissal of the arbitration proceedings on various grounds, including the point of jurisdiction, insufficiency of the stamp duty and failure on the part of the opposite party to produce the original copy of the purported loan agreement dated August 29, 2015. The learned Arbitrator held several sittings from December 06, 2022 to August 27, 2023. By an order dated September 16, 2023, the learned Arbitrator held that as the petitioners had raised a dispute with regard to the lack of jurisdiction to arbitrate the dispute, such issue would be decided first, after exchange of pleadings. Only if, such issue was decided in favour of the claimant, would the other issues be decided.

5. In the order dated September 16, 2023, the learned Arbitrator, for the first time, issued a direction for filing of the statement of claim and the statement of defense with counter-claim, if any. December 11, 2023 was fixed for necessary directions regarding inspection, discovery, as also submission of affidavit of admission and denial, and submission of evidence-in-chief, by the claimant.

6. The petitioners contend that the mandate of the learned Arbitrator ended as far back as on March 16, 2023. No directions to file the statement of claim and defence, had been issued by the learned Arbitrator at the appropriate stage. The pleadings were not completed within the statutory period of six months from the date on which the learned Arbitrator received notice of his appointment. Such notice was served upon the learned Arbitrator on 16th September 2022. The period of six months as contemplated under Section 23 (4) of the Act ended on March 16, 2023. The direction in the minutes of September 16, 2023, asking the parties to file the statement of claim and statement of defense, was without jurisdiction.

7. Accordingly, an e-mail dated October 12, 2023, was sent to the learned Arbitrator by the learned Advocate of the petitioners, calling upon the learned Arbitrator to refrain from holding further hearing in the matter as the mandate stood terminated and the learned Arbitrator had become functus officio.

8. On October 14, 2023, a hearing was held on the points raised by the petitioners in the e-mail, i.e., automatic termination of the mandate of the learned sole Arbitrator. The learned Arbitrator, by order No. 23, in the minutes dated November 08, 2023, held that the mandate continued. On the prayer of the claimant, the time for submissions of the statement of claim was extended upto November 16, 2023, and the respondents therein, i.e., the petitioners were allowed to file the statement of defense along with the counter-claim if any, within December 15, 2023. In case any counter-claim would be filed by the

petitioners, liberty to file a statement of defense to the counter-claim was granted to the claimant, within December, 2023. January 03, 2024 was fixed for the next sitting. Such order has been challenged before this Court.

9. It is contended by Mr. Mookherjee, Learned Senior Advocate on behalf of the petitioners that an application under Article 227 of the Constitution of India is maintainable before this Court, as the order suffers from irregular exercise of jurisdiction. The learned Arbitrator lacked inherent jurisdiction to pass orders directing filing of pleadings, after he had become functus officio. Such direction was contrary to law.

10. In view of the mandatory provisions under Section 23 (4) of the said Act, the statement of claim and the defense was required to be completed within a period of six months from the date the learned arbitrator received notice in writing of his appointment. The notice was received on September 16, 2022. The use of the expression 'shall' in the said sub-Section makes it clear that the time stipulated for completion of pleading is mandatory in nature, but the learned Arbitrator failed to appreciate the same. The view that as Section 23 (4) did not start with a non-obstante clause, the learned Arbitrator had the jurisdiction to fix the time limit for submission of the pleadings beyond the period prescribed under the said section, is erroneous. The learned Arbitrator failed to appreciate that Section 29-A(1) and Section 29-A(4) of the said Act, cannot be read in isolation to Section 23(4). Consequence of non-compliance of Section 23 (4) has been provided in Section 29-A(4).

11. Section 23 (1) and 25 of the Act, is subject to the provisions of Section 23 (4). If the time line prescribed under Section 23 (4) of the Act, is not followed, the time line prescribed under Section 29A(1) of the Act will not have any meaning and will be rendered otiose. Section 23 (4) of the Act was inserted by the amendment of 2019, which came into effect on and from August 30, 2019. Section 29-A (1) was also brought in by the said amendment.

12. The purpose behind such amendment was to incorporate a statutory mandate for completion of pleadings and consequently, for completion of the arbitration proceeding. 29-A(1) provides that an award shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-Section 4 of Section 23. The intention of the legislature was that the pleadings should be completed within 6 months from the date of receipt of notice by the arbitrator and the award should be published within a year from completion of the pleadings. Parties could consent to extend the period to file the pleadings upto six months, but not beyond six months from the date when the learned Arbitrator receives the notice. Similarly, parties could consent to extend the period of twelve months for

publication of the award, by a further period, not exceeding six months. Thereafter, only the court could extend the period for making an award beyond twelve months. Even if the proceedings were based on party autonomy, the legislature intended that pleadings should be completed mandatorily within six months from the date of receipt of notice of appointment by the learned Arbitrator.

13. Passing of the award has been made subject to completion of pleadings under sub-Section 4 of Section 23 and not Section 23 (1). The reference of the learned Arbitrator to Section 25 is misconceived. The said provision allows the Arbitrator a discretion to extend time to file the statement of claim or the statement of defense, upon the party showing sufficient cause. Such provision does not negate the mandate of the statute for completion of pleadings with six months from the date when the learned receives notice.

13. The learned arbitrator failed to appreciate that the mandate terminated on March 16, 2023, and he had become functus officio. He could not have issued further directions for filing of the statement of claim and statement of defense and could not proceed further with the arbitration dispute case. The directions were without jurisdiction.

14. The Sri. Krishna Committee report dated July 30, 2017, recommended that a time period of six months 'may' be provided for the submissions of pleadings under the Act. The legislature, in its wisdom, converted the recommendation "may" to "shall" thereby, making its intention clear and unambiguous. Even if the petitioners insisted that their application should be decided first, nothing prevented the Arbitrator from adhering to the time line by issuing a direction upon the parties to file the statement of claim and the statement of defence, pending the hearing of the application.

15. The Hon'ble Apex Court, by the suo motu order dated January 10, 2022, while extending the period for making an award under Section 29 A of the Act had also extended the period prescribed under Section 23 (4) of the Act. The Hon'ble Apex Court had always considered that Section 29 A of the Act was intrinsically linked to Section 23 (4) of the Act. The mandatory time limits fixed by the statute, required such extension by the Hon'ble Apex Court, to save the proceedings from being terminated by operation of law, during the pandemic situation. Although, the Act provides for extension of time to make an award by the court, such provision for extension of the time period specified under Section 23(4) of the Act, has not been incorporated in the said Act. Consequence of non-compliance of Section 23 (4) has been ingrained in Section 29 A i.e. award is to be published within twelve months from completion of the pleadings and the pleadings are to be completed within six months from the date the notice of appointment was received by the learned Arbitrator. Thus, non

-compliance of Section 23 (4) shall lead to termination of the proceeding. The learned Arbitrator is prohibited by law from making any award, if pleadings are not completed within six months as provided under Section 23 (4).

16. Section 23 (4) of the Act does not provide that the time period can be enlarged either by consent of parties or by order of court. In this case, the mandate terminated and the orders passed are wholly without jurisdiction and subject to interference by this court. The learned Arbitrator assumed jurisdiction not vested upon him by law, by passing directions to file their pleadings, although his mandate terminated, after expiry of six months from September 16, 2022. The order is against the legislative intent and the legislative policy which mandates completion of arbitration proceeding within the time period prescribed by the statute.

17. The jurisdiction of the court under Article 227 of the Constitution of India covers errors like breach of provisions of some law or material defects in the procedure, affecting the ultimate decision or any other illegality of like nature. Thus, interference by this court in the facts of this case is permissible and necessary, in order to correct the error of law and the procedural irregularity committed by the learned arbitrator.

18. Mr. Mookerjee relied on the following decisions:—

i. *Srei Infrastructure Finance Limited* v. *Tuff Drilling Private Limited*, (2018) 11 SCC 470.

ii. *Deep Industries Limited* v. *Oil and Natural Gas Corporation Limited*, (2020) 15 SCC 706.

iii. *Satyendra Nath Ray* v. *VCK Share & Stock Broking Service Limited*, decided in CO No. 1235 of 2021.

iv. *M.D. Creations* v. *Ashok Kumar Gupta* in CO No. 2545 of 2022.

19. Mr. Roy, learned Advocate for the claimant/opposite party supports the order impugned and submits that the said Act is a complete Code. The order impugned is not amenable to challenge under Article 227 of the Constitution of India. The petitioner is entitled to raise the question of propriety of the order, by filing an application under Section 34 of the said Act, once the arbitration is over. The Act should be given a restricted interpretation. The order is not passed in bad faith.

20. According to learned Advocate, Section 5 of the said Act provides the extent of judicial intervention. The intention of the legislature is to minimize judicial control over a dispute which is the subject matter of an arbitration proceeding. The section also implies the policy of least intervention by courts. Secondly, the Act provides the circumstances under which a mandate of an arbitrator will terminate. Situations leading to the termination of the mandate of the arbitrator

has been provided in Sections 14, 15, 29 A and 32 of the said Act.

21. A court can interfere with an arbitration award under the circumstances mentioned in Section 34 of the said Act. Explanation 1 to Section 34 (b) clarifies that an award can be set aside, if it is in conflict with the public policy of India, that is, the making of the award has been induced or affected by fraud or corruption or is in violation of Section 75 and 81 of the Act or is in contravention of the fundamental policy of Indian Law or is in conflict with most basic notion of morality and justice. The explanation gives a very restricted role to the courts while interfering with an arbitration proceeding. Apart from the situations mentioned in Section 34, the order of an arbitrator cannot be challenged before any court of law. Orders, which are passed in the course of an Arbitration, can only be challenged under the provisions of Section 34, after the arbitration proceeding is concluded and the award is made.

22. It is contended that violation of Section 23 (4) will not result in termination of the mandate. Had the intention of the legislature been such, the consequence of non-compliance of Section 23 (4) would have been provided in the said section itself. Section 23 (1) of the said Act gives the learned Arbitrator, ample discretion to determine the time within which the statement of claim and defense is to be filed.

23. Section 23 (4) has been only inserted to expedite the proceeding, in consonance with the object behind the promulgation of the Act. Speedy disposal of the dispute through this alternative redressal mechanism, is the only intention of the legislature. Section 25 (a) provides that the Arbitrator also has the power to extend the time for filing of pleadings, upon sufficient cause being shown. Section 29-A cannot be interpreted to be the consequence of non-compliance with Section 23 (4). If Section 23 (4) is treated to be a mandatory provision requiring all pleadings to be completed within six months from the date the arbitrator receives notice, provision of Section 25(a) would be otiose. If the court interprets that compliance of Section 23 (4) to be mandatory, the parties will again have to go back to court for appointment of an Arbitrator and such process will result in further delay, apart from causing great injustice to the claimant and wastage of resources.

24. Section 29-A does not speak of termination in case of non-compliance with Section 23 (4). Rather, a mandate has been imposed on the Arbitrator to complete the proceeding and pass the award within twelve months from completion of the pleadings.

25. The direction of the Hon'ble Apex Court by extending the time period mentioned in Section 23 (4), 29-A etc., during the pandemic, is a general extension given by the Hon'ble Apex Court, but the said decision cannot be interpreted to be a ratio on the mandatory nature of

Section 23(4) of the said Act.

26. Mr. Roy refers to the minutes of the meetings in support of his contention that the opposite party insisted that the application under Section 16 should be disposed of first, before directions were issued for completion of pleadings. Such fact was also recorded by the learned Arbitrator.

27. On the proposition of law that the Arbitration and Conciliation Act, 1996, is a complete code and any order passed by the learned Arbitrator, can only be challenged under Section 34 of the said Act, the following decisions were referred to:—

(i) *State of Bihar* v. *Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472,

(ii) *Waryam Singh* v. *Amarnath*, 1954 SCC OnLine SC 13,

(iii) *Girnar Traders* v. *State of Maharashtra*, (2011) 3 SCC 1 and

(iv) *Fuerst Day Lawson Limited* v. *Jindal Exports Limited*, (2011) 8 SCC 333.

28. Heard the learned Advocates for the parties. The position of law has been firmly established by judicial precedents to the extent that it is not competent for the High Court to correct errors, unless the errors have a relation to the jurisdiction of the Arbitrator. For this court to exercise jurisdiction under Article 227 of the Constitution of India, the error has to be either breach of some provisions of law or a material defect in the procedure affecting the ultimate decision, or in case of material irregularity in the manner in which the learned Arbitrator had dealt with the question before him.

29. The legislative policy is that this court normally should not intervene, in view of the alternative redressal mechanism provided in the Act itself. The High Court should be extremely circumspect in interfering with the orders of the learned Arbitrator, unless such order is patently illegal or there has been wrongful exercise of inherent jurisdiction by the learned Arbitrator.

30. Undoubtedly, Article 227 of the Constitution of India, is a constitutional provision, which remains untouched by Section 5 of the said Act.

31. However, the High court must be cautious in interfering with the order of the learned Arbitrator, upon considering the statutory policy as adumbrated by the Hon'ble Apex Court in the various decisions. The decisions do not leave any doubt that the jurisdiction of High Court under Article 227 of the Constitution of India to interfere with the order of the learned Arbitrator is microscopic. The policy of the legislature is in favour of minimum judicial control.

33. On such proposition of law, this Court has to now proceed to decide whether the order impugned suffers from inherent lack of

jurisdiction or irregular exercise of jurisdiction. In this case, a unilateral appointment of the erstwhile Arbitrator at the instance of the claimant, was set aside by the High Court. The present Arbitrator was appointed. On September 16, 2022, the learned Arbitrator was intimated about the order of the High Court and the Tribunal was reconstituted. First sitting of the Tribunal was held on September 19, 2022. The petitioners filed an application for dismissal of the proceeding on various grounds. On two occasions adjournments as prayed for by the petitioners were granted by the learned Arbitrator. A defect was found in the application filed before the learned Arbitrator. The matter was fixed on January 13, 2023. On January 13, 2023, as the defect was not removed, a further opportunity was given to the opposite party to rectify the same and the matter was made returnable on February 8, 2023. On February 8, 2023, a hearing of the application relating to dismissal of the arbitration proceeding commenced and the order was pronounced on September 16, 2023. The learned Arbitrator held that the point of jurisdiction raised in the said application would be decided as the first issue in the proceeding. Accordingly, the claimant was directed to submit the statement of claim within four weeks from the said date. Statement of defense and counter-claim, if any, was to be submitted by the opposite party within four weeks thereafter. In case, the opposite party submitted any counter-claim, the claimant would have the right to file a re-joinder, dealing with the counter-claim within three weeks thereafter. The date of the next sitting was fixed on December 11, 2023.

32. After the order was pronounced, the learned Advocate for the petitioners sent an e-mail to the learned Arbitrator intimating him that as the parties failed to complete the pleadings within the period fixed under Section 23 (4) of the said Act, the learned Arbitrator should record termination of mandate.

33. The argument advanced is that the expression "shall" in Section 23 (4) makes the application of the said provision mandatory and in case of non-compliance, the arbitrator has no option but to terminate the mandate. The time limit of 12 months for the publication of the award is to be computed from the date of completion of pleadings under Section 23 (4) of the said Act. The provision of Section 29-A should be read conjointly with the provisions of Section 23 (4), to ascertain the duration of the mandate within which the Arbitrator is required to publish the award. It is urged that as the pleadings were not completed as per Section 23 (4), i.e., within six months from service of notice upon the learned Arbitrator, the mandate terminated. All orders passed by the learned Arbitrator are without jurisdiction.

34. The contention of the petitioners is that as the law has been enacted for speedy disposal of the dispute between the parties, the

time line fixed under the Act, at every stage of the proceeding must be regarded as mandatorily fixed and if for any reason, whatsoever, default is committed either by the party or by the tribunal in adhering to the time limits so prescribed, the only consequence is termination of the mandate.

35. I find that the learned Arbitrator has considered the submissions of the respective parties and recorded the entire background leading to the email, by which the petitioners had called upon the learned Arbitrator to record automatic termination of the mandate. The facts and submissions of the parties have been recorded in great detail.

36. It is pertinent to mention here that the learned Arbitrator has been called upon to decide the issue on the basis of an e-mail, which was sent by the learned Advocate for the petitioners. The learned Arbitrator proceeded to decide the issue on the basis of such email.

37. The learned Arbitrator assigned reasons while arriving at the conclusion that the submissions of the petitioners could not be accepted as the learned Arbitrator had the discretion to fix the time within which pleadings were to be submitted by the parties, under Section 23 (1) of the said Act.

38. For appreciation of such issue, the provisions of Section 23 (1) is quoted below:—

> "23(1). Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issues and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements."

39. The provision indicates that the time limit for submission of pleadings by the parties has been left to the discretion of the parties, who in their wisdom, can frame their own timeline. Alternatively, the learned Arbitrator, in his discretion, can frame the timeline as well.

40. Before introduction of Section 23 (4) by the amending Act 33 of 2019 which took effect from August 30, 2019, no time limit had been statutorily fixed for submission of pleadings by the parties.

41. Section 23 (4) is quoted below:—

> "23(4). The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment."

42. The law is well settled that ordinarily, when the expression "shall" is used, it is mandatory in nature, but even after the use of expression "shall", if the statute is silent about the consequences of the non-compliance of such provision, it cannot be held that the provision

is mandatory.

43. Consequences of not adhering to the time limit prescribed in Section 23(4) of the Act, has not been provided in the Act.

44. In the matter of *New India Assurance Company Limited* v. *Hilli Multipurpose Cold Storage Private Limited*, (2020) 5 SCC 757, the Hon'ble Apex Court, while considering the mandatory nature of Section 13(2)(a) of the Consumer Protection Act, held as follows:—

> "30. In this regard, what is noteworthy is that Regulation 26 of the Consumer Protection Regulations, 2005, clearly mandates that endeavour is to be made to avoid the use of the provisions of the Code except for such provisions, which have been referred to in the Consumer Protection Act and the Regulations framed thereunder, which is provided for in respect of specific matters enumerated in Section 13(4) of the Consumer Protection Act. It is pertinent to note that non-filing of written statement under Order 8 Rule 1 of the Code is not followed by any consequence of such non-filing within the time so provided in the Code.
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> 31. Now, while considering the relevant provisions of the Code, it is, noteworthy that Order 8 Rule 1 read with Order 8 Rule 10 prescribes that the maximum period of 120 days provided under Order 8 Rule 1 is actually not meant to be mandatory, but only directory. Order 8 Rule 10 mandates that where written statement is not filed within the time provided under Order 8 Rule 1 "the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit". A harmonious construction of these provisions is clearly indicative of the fact that the discretion is left with the Court to grant time beyond the maximum period of 120 days, which may be in exceptional cases. On the other hand, sub-section (2)(b)(ii) of Section 13 of the Consumer Protection Act clearly provides for the consequence of the complaint to be proceeded ex parte against the opposite party, if the opposite party omits or fails to represent his case within the time given.
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> 32.********
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> 33. Once consequences are provided for not filing the response to the complaint within the time specified, and it is further provided that proceedings complying with the procedure laid down under sub-sections (1) and (2) of Section 13 of the Consumer Protection Act shall not be called in question in any court on the ground that the principles of natural justice have not been complied with, the intention of the legislature is absolutely clear that the provision of sub-section (2)(a) of Section 13 of the Act in specifying the time-limit for filing the response to the complaint is mandatory, and not directory."

45. In *Kailash* v. *Nanhku*, (2005) 4 SCC 480, the Hon'ble Apex Court

was dealing with an election trial under the Representation of People Act, 1951, and while considering the provision under Order 8 Rule 1 of the Code, held the same to be directory, and not mandatory. While holding so, the Court was of the view that "the consequences flowing from non-extension of time are not specifically provided" in the Code. The relevant paragraph is quoted below:—

46. (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away."

47. In *Salem Advocate Bar Association (2)* v. *Union of India*, (2005) 6 SCC 344, the Hon'ble Apex Court held as follows:—

> "20. … The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmade of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

48. Section 23 (4) also does not start with any non-obstante clause. The provision neither curtails the discretion of the parties to fix their own timeline for submission of the pleadings nor does it take away the power of the Arbitrator to fix the timeline for submissions of pleadings. The Hon'ble Apex Court in *Lachmi Narain* v. *Union of India*, (1976) 2 SCC 953, held that If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of pre-emptory language in a negative form is per se indicative of the intent that the provision is mandatory.

49. Section 23 (1) has not been amended by introduction of Section 23 (4). In other words, Section 23 (1) has not been made subject to the provisions of Section 23 (4). If the court proceeds to hold that the time frame under Section 23 (1) should be interpreted to be a shorter time limit and not beyond six months from service of notice upon the

learned Arbitrator, it would amount to rewriting the statute. This is not permissible in law.

50. There is another aspect which requires further consideration i.e., the consequence of default in not adhering to the time limit fixed under Section 23 (1) of the Act. The same has been provided in Section 25 of the said Act. Section 25 provides as follows:—

> "25. **Default of party**. - Unless, otherwise agreed by the parties, where, without showing sufficient cause-
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> (a) the claimant fails to communicate his statement of claim in accordance with subsection (1) of Section 23, the arbitral tribunal shall terminate the proceedings;
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> (b) The respondent fails to communicate his statement of defence in accordance with subsection (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the allegation by the claimant [and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];
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> (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral may continue the proceedings and make the arbitral award on the evidence before it."

51. Even after introduction of Section 23 (4), Section 25 has not been amended. Section 25 is silent about the consequence of non-compliance of Section 23 (4). Section 25 is not subject to Section 23 (4). Party autonomy to decide the time line for completion of pleadings as provided in Section 23(1) has also not been made subject to Section 23(4). Termination of mandate under Section 25 is also not automatic. Proceeding will terminate under this section, if the claimant is unable to show sufficient cause for condonation of delay in filing the statement of claim within the timeline fixed under Section 23 (1), for submission of pleadings. Discretion has also been left to the learned Arbitrator to either proceed ex parte against the respondent, without treating the failure to file the defence as an admission of the allegations of the claimant, or to condone the delay in submission of the defence. Non-adherence to the time limit prescribed under Section 23(4) will not attract termination of the mandate of the Arbitrator.

52. The learned Arbitrator rightly held that the law did not prescribe the time limit within which the respondent should submit a counter-claim or plead a set off, which was also a part of pleadings and the counter-claim could be introduced subsequently, unless ex facie barred. Thus, the question of mandatory application of Section 23(4) will not arise.

53. In my view, had the legislature contemplated Section 23(4) to be mandatory, in that event, consequence for non-compliance of Section 23(4) would have been inbuilt in the said provision or Sections 23(1) and 25(a) would have been made subject to Section 23(4). Section 23(4) was introduced while amending the Act, to ensure that the pleadings should be completed expeditiously, preferably within the time prescribed, otherwise, the very purpose of providing a speedy and efficacious mechanism for resolution of such disputes, would be defeated. Mention of Section 23(4), in Section 29-A should be read as a requirement for making the award within twelve months from the date of completion of pleadings and not as a requirement of publication of an award within eighteen months from service of the notice upon the learned Arbitrator. The statute provides the circumstances under which a mandate terminates. Had the intention of the legislature been to incorporate a mandatory provision for completion of pleadings within six months as per Section 23(4), the consequence of non-compliance would have been provided in the statute itself, or the section would have been couched in a different language. The orders directing filing of pleadings have not been passed in wrongful exercise of jurisdiction.

54. Under such circumstances, this Court does not find any illegality in the order impugned.

55. The order does not call for interference under Article 227 of the Constitution of India.

56. Hence, the revisional application is dismissed.

57. There shall be order as to costs.

58. Parties are to act on the basis of the sever copy of this order.

Later:—

Learned Advocate for the petitioners prays for stay of operation of this order.

Such prayer is rejected.

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