

Delhi High Court Imposes Costs On A Party For Raising Unwarranted Challenges To The Mandate Of The Arbitral Tribunal

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Introduction

In a recent decision in *Sarika Chaturvedi v. Agarwal Auto Traders*¹, the High Court of Delhi imposed a cost of ₹50,000 on a party for unnecessarily challenging the mandate of an arbitral tribunal. In this article, we briefly navigate through the facts and findings of the High Court in the aforesaid decision.

Brief Facts

The matter pertains to a petition seeking substitution of the arbitrator on the basis that the arbitrator who was earlier appointed by the High Court *vide* order dated 8 July 2022² had recused from the matter by way of a procedural order dated 19 October 2023 passed in the arbitral proceedings.

The Petitioner had provided a loan of ₹10 lakhs to Respondent No. 1 (Agarwal Auto Traders) which is a partnership firm run by Respondent Nos. 5, and 6 (Mr. Mahinder Kumar Agarwal and Mrs. Uma Agarwal respectively). The loan was disbursed in terms of a loan agreement dated 09 December 2016 ("**Agreement**").

Disputes arose amongst the parties as the Petitioner sought repayment of the loaned amount, however, the Respondent No. 1 did not repay the same in terms of the Agreement. Consequently, the Petitioner on 19 December 2018 invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") in terms of Clause 5 of the Agreement. The said clause reads as below:

"5. The parties agree that in the event of any dispute, differences and/or claims such shall be mutually settled, however if such remain unsettled, the same shall then be referred to the mutually appointed sole arbitrator, ... who shall then adjudicate upon the same as an arbitrator. Such proceedings shall be held in accordance with the Arbitration and Conciliation Act 1996 and shall be held at New Delhi"

In terms of the above clause, a sole arbitrator entered reference on 23 February 2019. However, on account of some allegations levied by the Respondents, the aforesaid sole arbitrator recused from the arbitral proceedings on 30 August 2019.

As a result, the Petitioner filed a petition before the High Court seeking substitution of the sole arbitrator. On 8 July 2022, the High Court allowed the petition filed by the Petitioner and appointed a new arbitrator ("**Arbitrator**") to take up the proceedings. The Arbitrator entered reference on 21 July 2022. Thereafter, the pleadings got completed and the evidence of the Petitioner concluded on 4 March 2023.

¹ *Sarika Chaturvedi v. Agarwal Auto Traders and Ors.*, 2024:DHC:4302 judgment dated 22 May 2024.

² *Sarika Chaturvedi v. Agarwal Auto Traders*, [O.M.P. (T) (COMM.) 47 of 2020] order dated 8 July 2022.

Owing to the expiry of the mandate of the Arbitrator on 14 July 2023, the parties agreed to give mutual consent to extend the same by six months, *i.e.*, until 14 January 2024 in terms of the provisions under Section 29A of the Arbitration Act. The matter was then fixed for Respondent's evidence on 7 October 2023.

On 6 October 2023, *i.e.*, one day before the hearing, the counsel for the Respondent wrote an email broadly conveying the following aspects:

- (i) In terms of Section 29A of the Arbitration Act, the period of 1 (one) year for computing the mandate of the arbitral tribunal shall commence from the date of completion of pleadings. As per the Respondent, the last pleading (statement of defence of Respondent) was filed sometime in March 2022.
- (ii) Since the Arbitrator had taken up the matter from the stage where it was left, taking the 6-month extension into account, the mandate of the Arbitrator, as per the Respondent stood terminated on 30 September 2023.

On 7 October 2023, the Arbitrator passed a procedural order recording that delays had been caused by the counsels for both sides. Further, taking into account the absence of the Petitioner, the matter was posted for a hearing on 9 October 2023.

Ultimately, on 19 October 2023, the Arbitrator passed a detailed order holding, *inter alia*, the following:

- (i) From the very beginning, both sides had been responsible for undue delays and made it impossible for the Arbitrator to act within the statutorily prescribed timelines.
- (ii) Illustratively, the Arbitrator listed out all the instances where adjournments were sought by both sides.
- (iii) Taking several other factors into consideration, the Arbitrator was of the view that the parties appeared to not be inclined to ensure that the matter was decided at the earliest. Therefore, the Arbitrator decided to withdraw from the matter.

Given the above circumstances, the Petitioner approached the High Court seeking the appointment of a substitute arbitrator.

Decision of the High Court

The High Court held that a perusal of the email dated 6 October 2023 and various procedural orders passed by the Arbitrator clearly showed that for whatever reasons, repeated adjournments were being sought by the parties. There was a clear attempt made to undermine the position of the Arbitrator. It was observed that the attempts made by the parties to derail, undermine, and frustrate the arbitral proceedings deserved to be dealt with in stern and stringent manner.

The High Court observed that the Respondent's attempt to unnecessarily challenge and question the mandate of the Arbitrator was clearly intended to create a stalemate. It was further clarified that parties cannot force the arbitrators to recuse/withdraw.

As regards the Arbitrator withdrawing from the matter, the High Court opined that it was only when the Arbitrator was pushed to an extreme situation that the said Arbitrator took the step of withdrawing from the proceedings.

The High Court observed that even from a legal standpoint as well, the Respondent's email dated 6 October 2023 was not maintainable.

In view of the above observations, the High Court observed that the appointment of a substitute arbitrator was not required, and the Arbitrator could continue with the proceedings. Further, the High Court extended the mandate of the Arbitrator till 31 December 2024 for conducting further arbitral proceedings.

The High Court also imposed a cost of INR 50,000 (Rupees Fifty Thousand) on the Respondent for its conduct.

Comment

By imposing costs on one of the parties that unreasonably challenged the Arbitrator's mandate and aimed to create a stalemate, the High Court highlighted an important issue often faced in arbitrations: the misuse of procedural tactics to delay proceedings. The High Court's judgment is an important affirmation of the principles underpinning arbitration and a necessary intervention to prevent the abuse of process.

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