



\$~55

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 22<sup>nd</sup> May, 2024*

+ **O.M.P. (T) (COMM.) 48/2024 & I.A. 29792/2024**

MS. SARIKA CHATURVEDI

..... Petitioner

Through: Mr. Natwar Rai & Ms. Aliya Parveen,  
Adv. (M: 9670617869)

versus

AGARWAL AUTO TRADERS & ORS.

..... Respondents

Through: Mr. Hemant Chauhan, Advocate (M-  
9999036345)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

### **JUDGMENT**

#### **PRATHIBA M. SINGH, J.**

1. This hearing has been done through hybrid mode.
2. This is a petition filed on behalf of the Petitioner-Ms. Sarika Chaturvedi seeking substitution of the arbitrator on the basis that the Id. Arbitrator who was appointed by this Court vide order dated 8th July, 2022 has recused from the matter vide procedural order dated 19<sup>th</sup> October, 2023 passed in *Ms. Sarika Chaturvedi v. Agarwal Auto Traders and Ors.*
3. The background of this case as stated in the petition is that the Petitioner provided a loan of Rs. 10 lakhs to the Respondent No.1-Agarwal Auto Traders which is stated to be a partnership firm run by the Respondent No. 5- Mr. Mahinder Kumar Agarwal and his wife, Mrs. Uma Agarwal who is Respondent No. 6 in the present case. The same was on the basis of a loan agreement dated 9<sup>th</sup> December, 2016 (*hereinafter, 'loan agreement'*).



The Petitioner sought repayment of the said amount, however, according to the Petitioner, the Respondent did not repay the loan amount despite several efforts made by the Petitioner. Consequently, the Petitioner on 19<sup>th</sup> December, 2018 invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 in terms of Clause 5 of the loan agreement. The said clause reads as under:

*“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, Shri H.L. Tiku, Senior Advocate of the address E-33, Jangpura Extn., New Delhi 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,”*

4. A perusal of the above clause would show that the parties herein agreed to appoint Mr. H.L. Tiku, Sr. Advocate as an arbitrator to adjudicate the disputes that have arisen between the parties. The said named arbitrator entered reference on 23rd February, 2019, however, due to some allegations levelled by the Respondents against the said named arbitrator, the Id. Arbitrator Mr. H.L. Tiku, Sr. Advocate recused himself from the present case on 30th August, 2019.

5. This led to the Petitioner filing a fresh petition seeking appointment of a new Arbitrator. In ***O.M.P.(T)(COMM) 47/2020*** vide order dated 8th July, 2022 a new arbitrator was appointed by the Court. The extracts of the said order read as under:

*“6. The petitioner has filed on record a copy of loan agreement dated 09.12.2016 which prima-facie*



*appears to have been signed between the parties. Clause 5 of the loan agreement contemplates resolution of disputes by arbitration under the A&C Act and names a Sole Arbitrator for the purpose. It also appears from the record that a notice dated 19.12.2018 invoking arbitration was issued by the petitioner, which though addressed to the named arbitrator, was copied to the respondents; and that pleadings in the arbitral proceedings were completed and the respondents even filed a counter-claim before the learned Sole Arbitrator.*

*7. It was in this backdrop that the respondents made a written request vidé communication dated 29.08.2019 to the learned Sole Arbitrator to recuse from the proceedings, which the learned Sole Arbitrator did vidé communication dated 30.08.2019.*

*8. Upon a conspectus of the foregoing, in the opinion of this court, there is no merit in the objections raised by the respondents and the present petition requires to be allowed.*

*9. The petition is accordingly allowed.*

*10. At this stage, Ms. Gupta, learned counsel for the respondents submits that the court may appoint a substitute arbitrator, leaving open the rights and contentions of the parties to be raised before such arbitrator.*

**11. Accordingly, recording the recusal of the learned Sole Arbitrator appointed earlier, this court appoints Ms. Warisha Farasat, Advocate (Ph. No. 9953825580) as the learned Sole Arbitrator to adjudicate upon the disputes that have arisen between the parties.**

*12. The learned Sole Arbitrator shall proceed with the matter from the stage at which the earlier arbitrator left the proceedings, subject to furnishing to the parties requisite disclosures under section 12 of the A&C Act; and in the event there is any impediment on that count, the parties are given liberty to file before this court an*



*appropriate application for that purpose.”*

6. The newly appointed arbitrator Ms. Warisha Farasat entered reference on 21st July, 2022, and passed her first order on the same day itself. The said order is extracted herein for reference:

*“1. I have been appointed as the sole arbitrator to adjudicate the disputes between the parties abovenamed arising under their aforementioned loan agreement by the Hon’ble High Court of Delhi by an order dated 08.07.2022 passed in O.M.P. (T) (COMM.) 47/2020.*

*2. Accordingly, I am hereby giving my disclosure in terms of S.12(1) of the Arbitration and Conciliation Act 1996 in **Annexure A** to this order.*

*3. The first hearing in the present matter shall be held on 26.07.2022 at 5 pm, through video conferencing. Both parties are requested to send the details (name, address and contact number) of the counsel representing them on or before 26.07.2022.”*

7. The pleadings are completed. It is stated that evidence and cross examination of the Petitioner concluded on 4<sup>th</sup> March, 2023. The matter was fixed for Respondent’s evidence on 7<sup>th</sup> October, 2023. However, the same was not completed and an extension of the mandate of the Id. Arbitrator was prayed. Vide order dated 16th September, 2023, insofar as the mandate is concerned, the Id. Arbitrator records as under:

*“1. The counsel for the Claimant informs us today that no petition under Section 27 was moved in the Hon’ble High Court. The counsel apologises profusely and states that there is no justification for not informing the Arbitrator earlier, despite having received the consent of the Arbitrator to move the Petition as far back as on 4.05.2023. He apologises for the delay in the proceedings caused on account of this lapse.*



2. The Arbitrator was appointed vide order of the Hon'ble High Court dated 8.07.2022, notice of which was received via email on 15.07.2022. Thus, the 1-year period stipulated in Section 29A elapsed on 14.07.2022. **The counsels for the Claimant as well as the Respondents, on instructions, convey their consent to extending the period by 6 months. The Respondents' counsel further states that written consent will be sent in due course.**

**3. The arbitration is now fixed for 7.10.2023 for the evidence of the sole remaining witness.**

4. The previous orders already record the substantial delay caused by the parties over the last year. They are requested to, henceforth, ensure full cooperation with the Arbitrator so that the matter can be decided at the earliest.”

8. As is clear from the above extracted order dated 16<sup>th</sup> September, 2023, the date on which the new arbitrator was appointed, was 8th July, 2022. Further, notice of her appointment was received by the said arbitrator vide an email dated 15th July, 2022. Hence, the one year period stipulated in Section 29A of the Arbitration and Conciliation Act, 1996 lapsed on 14th July, 2023. The parties gave consent for extending the mandate of the Id. Arbitrator by six months which means that the mandate of the Id. Arbitrator stood extended till 14th January, 2023. The matter was then adjourned to 7th October, 2023. On 6th October, 2023, the Respondent writes an email to the following effect:

*“This is in reference to the Arbitration period mentioned in the Procedural Order No. 30 dated 16.09.2023. It is submitted that on several occasions the counsel for the Respondents mentioned that there is a confusion regarding the time period of 1 (one) year for the present arbitration as he was engaged in the*



present matter at a later stage. With the best knowledge of the counsel of respondent, the calculation of the 1 (one) year period starts from the **date of completion of pleading** i.e., filing of statement of claim and statement of defence.

**As per Section 29A-"Time limit for arbitral award-3 [(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 sub-section (4) of section 23".**

**As per Section 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"**

In the present matter, the statement of defence was filed in the month of May, 2019 and the same is dated 16.05.2019.

Therefore, as per the counsel's limited knowledge and understanding, the period of one year for arbitration proceedings has been started from 16.05.2019.

Moreover, the earlier appointed Ld. Arbitrator had recused himself from the proceedings vide letter dated 30.08.2019. Afterwards, the parties approached the Hon'ble High Court of Delhi for the appointment of Ld. Arbitrator whereby the Hon'ble High Court vide order dated 08.07.2022 appointed the present Ld. Arbitrator and interalia held that **"the Learned Sole Arbitrator shall proceed with the matter from the stage at which the earlier arbitrator left the proceedings...."**

It is submitted that the calculation for the period of one year under above mentioned facts and circumstances would be as follows:

**1. Filling of Statement of Defence till the date of recusal letter of earlier Ld. Arbitrator-16.05.2019 to 30.08.2019=105 days**



**2. From the date of Appointment till balance period of one year (260 days) -14.07.2022 till 30.03.2023 = 260 days**

*Therefore, the computation for the period of extension of 6 months period with the consent of parties will starts from 30.03.2023. After the expiry of one year the mandate of the Ld. Arbitral tribunal for the proceedings was expired on 30.03.2023. Also, there is no objection from the Respondent if the period of 6 months will be extended from the date of 30.03.2023.*

*It is pertinent to mention that if the period of one year is terminated on 30.03.2023 then the extension for the period of 6 months will also be presumed to be terminated on 30.09.2023.*

*It is humbly requested to the Ld. Arbitral Tribunal to enlighten the parties and clarify the same.*

*The present email is sent in the interest of justice and avoid any confusion as there may be future problems at the time the Claimant file an application for the extension of period before the Hon'ble High Court of Delhi”*

9. In response thereto the Id. Arbitrator's office informs the parties to appear on 7th October, 2023 at 2:30 pm. However, what appears to have taken place after that is, on 7th October, 2023, the Id. Arbitrator records that an email dated 6<sup>th</sup> October, 2023 has been received by it on behalf of the Respondent. The said email raises an issue with respect to the mandate of the Id. Tribunal and is an attempt to reagitate this issue. The relevant portion of the order dated 7<sup>th</sup> October, 2023 is set out hereunder:

*“4. After this, the Respondent's counsel has addressed to the Arbitrator an email dated 6.10.2023, a mere day before today's hearing, raising new objections and relitigating the issue of Section 29A. The Respondent's counsel had previously attempted to reagitate this issue over Whatsapp messages sent after the order dated*



*16.09.2023 was passed. Not so much as a formal application has been filed in this regard by the Respondent's counsel, as he seeks to relitigate and re-argue an order that was passed 3 weeks ago. This is a mere dilatory tactic, in clear disregard for the Arbitrator's previous order where both the parties were required to cooperate for the expeditious disposal of the arbitration.*

*5. This is the 31st Procedural Order passed in this arbitration. Earlier orders also point to the delays caused by the counsels for both parties, including the orders dated 16.09.2023 , 20.05.2023, 26.04.2023, 16.03.2023, 11.03.2023, 18.02.2023, 4.02.2023, and 25.11.2022.*

*6. Since the Claimant's counsel has failed to appear today, the arbitration is posted again for 9.10.2023 at 4:30 PM, for further steps and directions.”*

10. On 9th October, 2023, the Id. Arbitrator records that she intends to withdraw from the matter. Thereafter, on 19th October, 2023, a detailed order was passed by the Id. Arbitrator recording as under:

*“1. By this order, the Ld. Arbitrator is recording her withdrawal from her office, along with the reasons thereof.*

*2. From the beginning of this arbitration, both the parties have been responsible for undue delays that have made it impossible for the Ld. Arbitrator to act out her mandate. This dissatisfaction has been recorded by the Ld. Arbitrator in her previous orders dated 25.11.2022, 15.12.2022, and 7.10.2023, and parties have been time and time again requested to cooperate, to no avail.*

*3. To illustrate, adjournments were sought by one or the other party on 29.07.2022, 24.09.2022, 31.10.2022, 10.11.2022, 24.11.2022, 4.02.2023, 18.02.2023, 11.03.2023, 16.03.2023, 20.05.2023, and 7.10.2023.*

*4. Further, both parties had neglected to attach to their*





*pleadings, documents crucial to the adjudication of their case as well as the Claimant's Section 17 application. Opportunities to do so by 2.09.2022, were granted by the Arbitrator on 12.08.2022 and 26.08.2022.*

*5. On 12,10.2022, the Arbitrator has recorded the manner in which further delay was caused by the Respondents by first providing copies of their Statement of Accounts that were blurred/illegible in the dates relevant to the arbitration, with perfectly clear preceding and succeeding pages. The clear record was sent to the Arbitrator only on 1.11.2022 - a full 2 months after the original deadline for filing additional documents-and was found to directly contradict the Respondent's pleadings, as noted by this Arbitrator in her order dated 3.11.2022. The then counsel for the Respondents was given a last opportunity to provide an explanation for this serious discrepancy, before the Arbitrator could decide the Section 17 application moved by the Claimant.*

*6. Strangely, the Respondent's counsel of the time simply withdrew from the proceedings within a week of being asked for this explanation, and was substituted by Mr. Hemant Chauhan on the next date of hearing-no letter of authority/vakalatnama, nor even a formal communication of the withdrawal was sent to the Arbitrator's office. Thus, the arbitration had to be adjourned again, and further delays were caused.*

*7. On the Claimant's end, the counsel caused further inordinate delay over the summoning of Mr. Deepak Dhingra, as recorded in orders dated 29.03.2023, 4.04.2023, 26.04.2023. Finally, after the Arbitrator gave her consent to the Claimant's proposed petition before the Hon'ble High Court of Delhi for summoning Mr. Dhingra as a Court Witness, the Claimant failed to file such a petition or intimate the Arbitrator about deciding to not do so.*

*8. Even to the very end, after the order dated*



16.09.2023 vide which the Arbitrator recorded the 6-month extension of her tenure by the parties' consent, the Respondent's counsel started relitigating the extension over whatsapp messages and emails to the Arbitrator's office, without moving a formal application for recall/review of the order dated 16.09.2023.

**9. Even the counsel for the Claimants failed to appear on the last day, i.e. 7.10.2023, at both the originally fixed time and at a later time when he was specifically directed to be present upon his initial absence.**

10. The Arbitrator has decided the Section 17 application of the Claimant and Section 38 application of the Respondent by order dated 15.12.2022. The taking of evidence is complete but for the sole remaining Respondent Witness, who has not yet been cross-examined by the Claimant's counsel.

**11. Despite this progress, the Arbitrator is constrained to conclude that the parties have not been, and still do not seem to be, inclined to ensure that the lis is decided at the earliest, despite the best efforts and repeated requests of the Arbitrator.**

**12. Therefore, with regret, the Arbitrator records her withdrawal from her office.”**

11. Vide the present petition, the Petitioner, therefore, seeks appointment of a substitute Arbitrator.

12. Notice was issued in this matter on 20th May, 2024. Today, Mr. Chauhan, Id. Counsel appears on behalf of the Respondent and submits that there was ambiguity with regard to the mandate of the Id. Arbitrator and hence he addressed the email dated 6th October, 2023. He submits that he had no intention to offend the Id. Arbitrator.

13. A perusal of the email dated 6<sup>th</sup> October, 2023 and various procedural orders passed by the Id. Arbitrator clearly shows that the Id. Arbitrator is



expressing her frustration and exasperation in the matter. For whatever reasons, repeatedly adjournments are being sought by the parties. The Respondent's conduct has also not been above board. There has been a clear attempt to undermine the position of the Ld. Arbitrator.

14. It is observed that the ld. arbitrator initially appointed in the matter pursuant to the loan agreement had recused because of the objections made by the Respondent. Thereafter, the Respondent has continuously addressed emails or raised questions as to the mandate of the ld. Arbitrator appointed vide order dated 8th July, 2022 in ***O.M.P.(T)(COMM) 47/2020***.

15. The ld. Arbitrator has, on 16th September, 2023 clearly clarified that issue with respect to the mandate of the ld. Arbitral Tribunal. It is further recorded that the Respondent has also given its consent for extension of the mandate of the ld. Arbitrator by a period of 6 months until 7<sup>th</sup> October, 2023. Thus, there was no occasion to write such an email, on 6th October, 2023 questioning the mandate of the Arbitrator once again.

16. Such attempts by parties to derail, undermine and frustrate arbitration proceedings deserve to be dealt with in a stern and stringent manner. In fact the Respondent's attempt has been to unnecessarily challenge and question the mandate of the ld. Arbitrator with a clear intent to create a stale mate. Repeated interventions of the Court in Arbitral proceedings are to be avoided and parties cannot force the arbitrators to recuse/withdraw.

17. The arbitrator appointed in the present case, is an advocate of some standing and the orders passed by the said arbitrator as also the emails sent to the arbitrator, would reveal that it is only when the arbitrator was really pushed to an extreme situation, that the said arbitrator took an extreme step to withdraw from the proceeding.



18. The Court does not condone such type of conduct on behalf of the Respondent. In terms of Section 29A of the Arbitration and Conciliation Act, 1996, the period of 12 months is reckoned from the date of completion of pleadings. It is noted that pleadings before the Id. Arbitrator were completed and issues were framed on 12<sup>th</sup> January, 2023. The Respondent has already given consent for extending the mandate of the Id. Arbitrator by a period of six months on 16<sup>th</sup> September, 2023. Therefore, even if the period of six months as contemplated in Section 29 of the Arbitration and Conciliation Act, 1996 is reckoned from 16<sup>th</sup> September, 2023, the mandate of the arbitrator would have expired only on 16<sup>th</sup> March, 2024. The email dated 6<sup>th</sup> October 2023 was totally uncalled for and a clear act of defiance with an intent to frustrate the arbitral proceedings. There was sufficient time left of the mandate of the Id. Arbitrator, when the email dated 6<sup>th</sup> October, 2023 was sent on behalf of the Respondent.

19. It is observed that clearly there was an attempt by the Respondent to somehow overreach the arbitral proceedings and delay the arbitral proceedings further. For whatever reason it also appears that the Respondent was trying to frustrate the mandate of the Id. Arbitrator by addressing such emails.

20. In the opinion of this Court, the mandate of the arbitral tribunal had not ended on 6<sup>th</sup> October, 2023 and the email to this effect sent by the Respondent was completely unnecessary.

21. It is thus held that a substitute arbitrator is not required to be appointed in this matter as the Id. Arbitrator has taken enormous pains in completing the pleadings as also conducting the evidence in the matter. Accordingly, the same very Arbitrator shall recommence the proceedings



from the stage at which she had recused/resigned. The mandate of the arbitrator is extended till 31st December, 2024. The Respondent's evidence shall now continue.

22. For the delay which has occurred in this matter and for the kind of conduct that the Respondent has exhibited, costs of Rs.50,000/- are imposed upon the Respondent which shall be deposited with the Delhi High Court Legal Services Committee (DHCLSC) within two weeks. The bank details of the DHCLSC is given below:

***Bank Name: UCO Bank, Delhi High Court***

***Saving A/c:15530110008386***

23. If the costs are not deposited, the Respondent's evidence shall be deemed to be closed in the arbitral proceedings. The matter shall proceed for final arguments before the arbitrator.

24. Let a copy of this judgment be served to Ms. Warisha Farasat, Id. Arbitrator [M:9953825580].

25. Parties to appear before the Id. Arbitrator on 8th July, 2024.

26. The petition is disposed of. All pending applications are disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**MAY 22, 2024**

*dj/rks*

*(corrected & released on 28<sup>th</sup> May, 2024)*