

Bombay High Court

Fedbank Financial Services ... vs Narendra H Shelar Through Its ... on 24 February, 2020

Bench: G.S. Patel

13-ARBAP34-20.DOC

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION APPLIATION NO. 34 OF 2020

Fedbank financial Service Ltd through its A0  
Zahid Sultan

...Petitioner

Versus

Narendra H Shelar, through LRs & Ors

...Respondent

Ms Juhi Bhogale, with Ms Akshata Teli, i/b GNP Legal, for the  
Petitioner.

Mr VL Subramanianrajan, for Respondents Nos. 2 & 3.

CORAM: G.S. PATEL, J.

DATED: 24th February 2020

PC:-

1. Even leaving aside a question of service, in my view, this arbitration application is thoroughly misconceived.

2. The Petitioner invoked arbitration under a Facility or Loan Agreement dated 21st June 2013. That had an arbitration clause. The Petitioner invoked arbitration by its letter of 22nd March 2018, a copy of which is at 'Exhibit C' to the Petition. By this letter, the Petitioner nominated a sole arbitrator.

3. The learned Sole Arbitrator entered upon the reference to his arbitration on 4th April 2018.

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4. It seems that there was a statement of claim and a statement of defence and then nothing at all happened.

5. The Respondent then fled an application for closure of the proceedings saying that they had not been concluded within one year. On this the learned sole arbitrator made an application that since time had not been extended, there being no application by the Petitioner under Section 29-A of the Arbitration and Conciliation Act, the arbitration proceeding was closed with the mandate terminated. Parties were set at liberty to take appropriate steps in accordance with law. This order passed by the learned sole arbitrator was on 18th July 2019.

6. Ms Bhogale cannot dispute the fact that the Petitioner was late in filing a Section 29-A Petition. It did file that Petition, Arbitration Petition No. 1271 of 2019. I dismissed it on 9th January 2020.

7. The situation therefore is that an arbitration previously invoked with a nomination agreed by the Respondent has now come to an end. The Arbitral tribunal mandate has been terminated. There is no extension of time.

8. What the Petitioner now seeks is to start the process all over again by presenting this application under Section 11. This is a second go-around for the same arbitration.

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9. The opposition from the Respondents is that there must be some limit. The emphasis in arbitration law is on a speedy and time-bound disposal. If a Petitioner invoking arbitration is itself remiss in diligently prosecuting the arbitration, the submission is that it surely cannot be open to the Petitioner to come back to Court and constantly seek to reopen the arbitration like this. If such constant circular actions are permitted, then conceivably there would be no end to arbitration at all and no finality to the disputes. The arbitration law cannot possibly aid, it is submitted, a party who is not vigilant in prosecuting its rights and remedies.

10. I agree. There is no explanation for the delay. The order of the arbitral tribunal, though short, does not in any way assist the Petitioner.

11. I do not see how an arbitration clause can be constantly revived and brought back to life again and again like this. If the Petitioner has any rights under the contract in question it is at liberty to pursue those but its arbitral remedy must surely be considered to be closed.

12. The application is dismissed.

13. The Advocate for the Respondents to file his Vakalatnama on or before Friday, 28th February 2020.

(G. S. PATEL, J) 24th February 2020