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Unwarranted delays during Arbitration Proceedings after completion of Pleadings: Causes and Feasible Solution

Chhavi Sardana[a]

[a]Rajiv Gandhi National University of Law, Patiala, India

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Arbitration that was once considered as the "panacea" for the loopholes present in litigation has now rolled the dice and become very complicated in terms of speedy trial for which it was designed thereby defeating the main purpose of speedy dispute resolution mechanism. Most of the parties used to refer to the arbitration because they considered it inexpensive and speedy but now arbitration is used for personal advantages because both the parties exercise enough control over the proceedings and use the delay as a weapon to thwart the proceedings or just challenge the decision. Reforms on how this process can be fastened are pertinent by interlinking the A, B, C, D of the entire judicial system where A stands for Access, B for the backlog, C for cost, and D for the delay. A cost-benefit analysis has also been drawn considering litigation an alternative and by simply dealing with the loopholes present in arbitration. The main aim of this research is to encapsulate and identify the main lacunas that are obstructing the very path to speedy justice and to provide some rationales which can curb the implications of delays and other challenges in the proceedings. Also, how does an arbitrator exercise powers to terminate these excuses under section 34 will be the formative area of law to be discussed upon? In the end, the author will try to sum up the different solutions and propose some tools in order to avoid excessive delay in conducting arbitration proceedings.

Keywords: *arbitration, pleading, unwarranted delay.*

INTRODUCTION

"Mr. Sharma filed a complaint against XYZ Company in an arbitrary tribunal as per decided in their agreement and during the proceedings, it was anticipated by both the parties that XYZ Company would be held guilty and will have to give compensation to Mr. Sharma as the entire proceedings were going against the company. But XYZ Company decided to use some tactics to stall the normal proceedings by delaying the final proceeding as much as possible so that company can put off that evil day when it will be formally awarded with compensation or more evil day when it has to give that payment. After several months of excuses, finally, the day came of final proceeding and as expected, the decision was in favor of Mr. Sharma but XYZ Company then tactfully challenged the decision before the trial court causing further delay. "

How unfair it would be for countless Mr. Sharmas if companies such as XYZ Company use such tactics to thwart the proceedings or obstruct the last Day of Judgment by making excuses and delaying it. How will our country be going to ensure justice when such 'arbitration guerilla' or 'arbitration terrorism' is used by either of the parties? Isn't it rhetoric for a country that claims to ensure justice and fairness? The above situation could have another possibility when Mr. Sharma himself is guilty but filed a complaint thinking that everything is in his favor and in this way he can demand compensation from the company and he'll be rich. But in further proceedings, he discovered that the situation went contrary to his plan and he decided to use excuses and delay the final day of proceedings so that he couldn't face that evil day earlier and can put off that punishment as far as possible.

IDENTIFYING THE LOOPHOLES

Every citizen dreams of a fair judiciary that can ensure speedy justice to the sufferer. But *"For a country like India, it is more dangerous not to dream than dare to dream."* Since there's already a massive backlog of cases pending in the courts, one can't ignore the importance of dispute resolution mechanisms like arbitration for reducing that burden. Curbing and doing this pendency of cases away should be the appropriate wish list for ensuring justice in any judicial system. Reforms for speeding this process are necessary by interlinking the A, B, C, D of the

entire judicial system where A stands for Access, B for the backlog, C for cost, and D for the delay.

Nani Palkhivala famously said, "While it is true that justice should be blind, in our country it is also lame. It barely manages to hobble along."

A very long gone are the peaceful days (if they truly existed) when there was consensus ad idem or mutual obligation between both the parties to continue with the normal proceedings without thwarting it and with due diligence. But now, widespread usage of tactics of delaying has been common. Since in arbitration, both the parties exercise much control over the proceedings, they see it as an opportunity to delay and thwart the ongoing litigation for their personal advantages. These tactics are used for various reasons by both parties.

In order to understand the present situation and issues and let alone the future, it is necessary to dig out the past scenarios and history of that particular incident. It was the 18th century when William Godwin uncloaked the very fact that justice in the world has been hampered from the 3 defects that are delay, cost, and magnificent uncertainties which are responsible for deciding out the conclusion in any litigation whether there'll be a delay or speedy trial. For example, in 2008, during the 26/11 incident, a British man got paralyzed and he decided to demand compensation but he refused to file the case in Indian courts saying he can't wait for compensation which will be going to take 20 years if filed in India and then he filed the case in UK's court. This is the reputation Indian courts and arbitrary tribunals have worldwide for not ensuring timely justice.

Nani Palkhivala once said, "Law may or may not be an ass, but in India, it is a snail – it moves at a pace which would be regarded as unduly slow in a community of snails."

Furthermore, the scenario is quite similar when it comes to arbitration which has also been plagued by many loopholes as litigation does and is quite expensive and time-consuming. The most common cause of delay in arbitration is respondent's act who wants to refrain from proceedings in most of the cases and use delaying as a weapon or in other scenarios when the claimant himself found in the later discovery that he is the real culprit or when either of the

parties has to give the payment as compensation so that party tries to delay that day when he has to give the payment. Also, it is ironic that in other areas, speed and efficiency are the main stones to measure how developed a country is and how will it ensure justice and fairness.

MODERN PROBLEMS REQUIRE MODERN SOLUTIONS

Here's the answer to the above questions that this delay can't excuse the parties from the actual process of arbitration. Just think till when either of the parties can delay it knowing that they'll have to pay the cost of arbitration too? The more they delay it, the more will be the cost. Many scholars believe that time is money but when it comes to ensuring justice and resolving disputes which have a direct impact on humans, it has become a more cherished commodity.

Also, attorneys of both parties would be intelligent enough to know that these delays will further cause confusion and will further obstruct the arbitrator from focusing on pertinent issues and facts of any case. Moreover, arbitrators also exercise some powers in their hands to prevent further delay through effective management as they can curb the party's inclination to delay and can prevent excusing from the proceedings.

"An incompetent lawyer can drag a case for years and a competent lawyer can drag it even longer"

Though obstruction of proceedings by either of the parties isn't the only factor contributing to delay, others could be a shortage of acceptable arbitrators, increased use of attorneys, and hearing postponements. Well experienced and the most competent arbitrators try their best to complete cross-examination, and passing of the award and all other activities within a reasonable time. But most of the arbitrators linger incessantly due to various factors like indecisive tribunals, intolerance of parties, multiple applications, or when a witness is not in the same city or country.

In some cases, even after the final proceedings, the decision is challenged by either of the parties before the trial court. Then comes the relevance of section 34 which seeks to confine the ambit by stating 'opposed to public policy. However, the verdict of ONGC versus Saw Pipes highlighted that decision of the arbitrator can be challenged on the ground of being patently

illegal or when the decision is contrary to the provisions of law or act. The decision is judged on the ground whether it violates or infringes the public policy or contradicts the law by not adhering to the policies. Also, the case of NALCO versus Presteel Fabrications Limited has expressed optimism that apt legislation would rectify it but it's yet to see the daylight.

SECTION 34[1]: A RELIEF OR A HINDRANCE?

This problem has been addressed many times in the past but unfortunately, no actions have been taken as to improve these inefficiencies in the proceedings. As per the normal provisions of the legislation, even an unsuccessful party in a money suit demanding a judgment and diktat of the trial court under Order XLI of the Code of Civil Procedure, 1987 can be kept on terms by the appellate court and granted interim orders on a conditional basis. Thus, section 34 in itself is a relief for parties who want to use it for their advantage, and experience for the successful claimant could be painful and lopsided.

It is not uncommon for a party to file a suit in the court in spite of the fact that their arbitration agreement has been signed by both of them because it is not necessary that their mutual understanding would remain the same throughout the contract and in case of any dispute, they'll need a third party to resolve it. In such cases, the defendant is required to file an application under section 8 of the Act, for the court to refer the parties to the arbitration. While one cannot deny reasonable avenues for a challenge against unjust and perverse arbitral awards, delay and expenditure are inevitable. One of the duties of an arbitral tribunal is to conduct the proceedings in a speedy and cost-effective way; for instance, Art. 17(1) UNCITRAL Arbitration Rules 2010[2] says that: "The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute". The LMAA has issued its own guidelines "with a view to making the decision-making process as cost-effective and efficient as possible".

[1] Civil Procedure Code 1908, s 34
[2] UNCITRAL Arbitration Rules 2010, art 17(1)

However, sometimes the arbitrators are not able to deliver their award in a timely, and such a delay can take weeks, months and-in worst cases-more than one year. So, this lack of efficiency is perceived as a major problem among the arbitral community. Cost and lack of speed were both ranked by respondents as amongst the worst characteristics of international arbitration.

CONCLUSION

The key point to be emphasized here is that since the intervention of the courts is in-built in arbitration law in India, in order for one to be a successful arbitration practitioner, litigation skills are imperative. Even the very conduct of arbitral proceedings entails litigation strategies, skills, and methods, particularly in pleadings, cross-examination, and oral arguments. These skills are certainly required when the arbitral tribunal comprises retired Judges, who are (rightly) accustomed to court practices and a 'judicial approach to the matter. In fact, where the arbitral tribunal is 'non-legal (such as tribunals comprised of technical arbitrators such as engineers, technologists, etc.) litigation skills are even more necessary to keep the entire process broadly within the parameters of substantive and procedural law! This lesson is intended essentially for law students aspiring to be 'arbitration specialists', who see arbitration as an alternative career option to litigation. Unless the basic litigation skills and experience are in place, one may struggle to cope with the arbitration, much less be a successful arbitration practitioner. The next time someone announces arbitration in India as being speedy, inexpensive, and 'out of court', think again. While arbitration continues to be a popular option as a means of dispute resolution, there are evident lacunae in the law that need to be plainly dealt with in order to make the process expeditious and affordable in practice. It’s high time people should approach arbitrary tribunals for trivial and short matters than approaching the supreme court directly since there’s already a backlog of cases pending in the judiciary.