

CHAPTER XLI

RULES UNDER THE ARBITRATION ACT, 1940 (ACT No. 10 OF 1940)

772. Title of application – (a) Save as hereinafter otherwise provided, all applications, affidavits and proceedings under the Arbitration Act, 1940 (hereinafter in this chapter referred to as the “Act”) shall be intituled in the matter of the Act and in the matter of the Arbitration.

(b) Applications under Chapter IV of the Act shall be intituled in the suit or matter in which the Order of reference is made.

(c) Application under section 34 of the Act shall be intituled in the suit which the applicant seeks to have stayed.

¹**[773. Mode of application** – (a) Save as hereinafter otherwise provided, all applications under the Act shall be made by petition and shall be placed on board for admission after prior notice to all parties concerned. The Judge may consider admission of the petition in exercise of his discretion even though no such notice is served on the other side. The Judge may admit or reject the petition or pass such other orders thereon as he may deem fit.

1. Rule 773 was substituted by G.N.No. G/Amend/2419. dated 27-3-1991, pub. In M.G.G, Pt. IV-Ka,p.170-173

(b) Applications under section 34 of the Act shall be made by notice of motion in the Arbitration, suit or matter as the case may be.

(c) Applications for extension of time for an arbitrator or umpire to make his award in any suit or matter filed in Court, when not consented to by all parties, shall be made by Chamber Summons. When such applications are consented to by all parties, they may be made in Chambers by presenting a consent order supported by an affidavit verifying the consent of parties.

- (d) The first application for extension of time for an arbitrator or umpire to make his award in any arbitration which is proceeding under Chapter II of the Act, whether consented to or not, shall be made by petition. Subsequent applications, when consented to by all parties, may be made in Chambers by presenting a consent order supported by an affidavit verifying the consent of parties. When subsequent applications are consented to by all parties, the applications shall be made by Chamber Summons.
- (e) No separate petition for interim relief will be necessary. The petitioner shall be entitled to incorporate all necessary averments, submissions and prayers for interim relief in the main petition and pursue his application for interim relief without filing any separate petition for interim relief.

[Case Law: Enkay Texo Food Industries Ltd Vs. Consite Engineering Co. Pvt. Ltd., 1995(1) BCR 76]

774. Contents of petition – Every petition shall be divided into paragraphs numbered consecutively and shall contain in a concise form a statement of the material facts relied on and the nature of the relief asked for and shall clearly specify the persons liable to be affected thereby. A copy of the arbitration agreement, the special case or the award, if any, shall, whenever necessary be annexed to the petition.

775 Fees of the arbitrator and umpire – When the Court makes an order referring a matter in dispute to a arbitration, it shall make such provision as it thinks proper for securing the fees of the arbitrator and umpire.

776. Notice of filing application to persons likely to be affected – Upon any application by petition under the Act, the Judge in Chambers shall, if he accepts the petition, direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted.

777. Processes to be issued on application by arbitrator or umpire – Processes to the parties to arbitration proceedings or to witness shall be

issued by the Prothonotary and Senior Master on the written application of the arbitrator or the umpire.

778. Application to be accompanied by copy of arbitration agreement - If the proceedings are under Chapter II of the Act, the application for the issue of such processes shall be accompanied by a copy of the agreement under which the arbitrator or the umpire is acting. If otherwise, the date of the order appointing him arbitrator or umpire shall be mentioned in the application.

779. Special Case – Where the arbitrators or umpire state a Special Case under section 13(b) of the Act for the opinion of the Court, they shall transmit it to the Prothonotary and Senior Master along with the fee required for filing the same. They shall at the same time give notice of such transmission to the parties and intimate to the Prothonotary and Senior Master the names and addresses of the parties.

780. Form of the Special case - Every Special Case stated under Section 13 (b) of the Act shall contain only a statement of the material facts and the points on which the opinion of the Court is sought. It shall be in Form No. 84.

781. Notice – When the Special Case is filed, the Prothonotary and Senior Master shall issue notice of such filing to the parties, intimating to them the date fixed for the hearing of the case and requiring them to appear before the Judge in Chambers on the said date.

782. Copy of the Court's order and judgment to be forwarded – The Prothonotary and Senior Master shall send a copy of the Court's order and judgment, if any, to the arbitrators or umpire as the case may be.

783. Issue of notice of application under section 20 - When an application is presented under section 20 of the Act and the Judge in Chambers directs notice to be issued, the Prothonotary and Senior Master shall issue a notice returnable in Court calling upon the opposite party to show cause why the arbitration agreement should not be filed.

Unless otherwise ordered, the application shall not be heard until after ten days from the service of the notice upon the party.

784. Filing of Award - The arbitrator or umpire shall, in accordance with the provision of section 14 of the Act, cause the award or a signed copy thereof to be filed in Court, together with any deposition and documents which may have been taken and proved before him and the opinion pronounced by the Court on a special case submitted to him, if any, by forwarding the same under a sealed cover addressed to the Prothonotary and Senior Master, with a letter requesting that the same be filed. He shall also send together with the award a memorandum of full postal addresses of the parties concerned, a copy of the notice given by him and the affidavit of service of such notice and of the attestation, if any, of his signature on the award.

785. Arbitrator or Umpire to make affidavit – The arbitrator or umpire shall also make an affidavit stating (1) the data on which the award was made and signed, (2) that all deposition taken and documents proved before him have been forwarded to the Court along with the award and (3) that no documents which came into his possession in the course of the arbitrate ion proceedings have remained with him. Such affidavit shall be filed along with the award.

786. Notice of filing award – When the award has been filed in Court, the Prothonotary and Senior Master shall forth with issue notice of such filing to the parties interested in the award.

¹**[787. Passing of Judgment and Decree on Award** – (1) On expiry of 30 days from the date of service of notice of filing of the award on the parties, the award shall be placed by the Prothonotary and Senior Master before the Chamber Judge for judgment and decree in terms of the Award. The Award will be so place not latter than sixty days from the completion of service of notice of filing of the Award, as aforesaid. It shall be accompanied by a certificate from the Prothonotary and Senior Master that no application has been made to remit the Award or any of the matters referred to Arbitration for reconsideration or to set aside the Award or, if made, it has been disallowed.

1. Rule 787 was substituted by G.N.No.G/Amend/2419, dated 27-3-1991, Pub.in M.G.G. Pt. IV-Ka,p.170-173

(2) A party interested in enforcing the Award may apply for judgment and decree in terms of the Award on the expiry of thirty days from the date

of service of the notice of the Award by filing a petition under section 17 of the Act duly accompanied by a Certificate from the Prothonotary and Senior Master that no application has been made to remit the Award or any of the matters referred to arbitration for reconsideration or set aside the Award or, if made, if has been disallowed. Petitions under section 17 of the Act shall not be required to be placed on Board for admission but shall be placed on Board of the Chamber Judge for judgment and decree in terms of the Award. A notice of not less than 4 days shall be given to the other side of the filing of the petition.

(3) When a petition is filed for setting aside or remitting the Award or for reconsideration of any of the matters referred to arbitration, a party inserted in enforcing the Award shall be at liberty to file a petition for judgment and decree in terms of the award immediately on the dismissal of the above referred petition. The petitioner need not produce any certificate from the Prothonotary and Senior Master to the effect that the petition to set aside or remit the Award has been disallowed. The petitioner shall, however, produce a certified copy of the judgment and order dismissing the petition to set aside or remit or modify the Award unless dispensed with by the Judge hearing the petition for decree in terms of the Award. In such a case, the petition under section 17 of the Act shall be placed before the same Judge who has decided the petition to set aside, remit or modify the Award as far as possible.

(4) Where an application for judgment and decree in terms of Award is already pending at the time of disposal of the petition to set aside or remit or modify the Award, such pending application shall be placed before the Judge hearing the petition to set aside, remit or modify the Award to be dealt with immediately on disposal of such petition.

(5) The Judge disposing of the petition to set aside or remit the Award shall have the discretion to pass a judgment and decree in terms of the Award immediately on delivery of his judgment refusing to set aside or remit the Award or on such date as he deems fit thereafter without requiring any written application from any of the parties interested in enforcing the Award.

[Case Law: Anilkumar Indarpal Seth vs. Union of India, 1997(1) Bom.C.R.284]

(6) Where the application is for judgment on an Award made under Chapter II of the Act, the party making the application should be called the plaintiff and the other parties shall be called the defendants.]

788. ¹[Deleted].

1. Rule 788 was deleted by G.N.No.G/Amend/2419, dated 24-3-1991, Pub.in M.G.G. Pt. IV-Ka, p.170-173.

789. Code of Civil Procedure and High Court Original Side Rules

- In cases not provided for in the rules contained in this chapter, the provisions of the Code of Civil Procedure, 1908, and the rules of the Court in suits and matters on the Original Side of the court, shall, with any necessary modifications, apply to all proceedings before the Court and to all appeals under the Act. In case of inconsistency between the provision of the Code of Civil Procedure and the rule of the Court referred to herein, the said rules of the Court shall prevail.
