

News

Delhi High Court turns down a request to replace a former SC judge as an arbitrator because the award has been late for 16 months.



After noticing that the award was ready to be made public, the Court chose to give the arbitrator a short extra time to complete his or her work and deliver the decision.

The Delhi High Court turned down a request to replace the sole arbitrator in a construction contract arbitration case with a retired Supreme Court judge. This was done even though the arbitral decision had been announced 16 months late.

One judge Judge Subramonium Prasad was part of the bench that decided that a short final extension of time to pass the arbitral award was appropriate since the award was already ready and the processes had reached their end point.

"Applying the law laid down by the Apex Court in Rohan Builders (India) Private Limited v. Berger Paints India Limited, 2024 SCC OnLine SC 2494, this Court is inclined to regularize the period of the mandate of the Arbitral Tribunal from 30.09.2025 till today and extend the mandate of the Arbitral Tribunal till 31.01.2026, so that the award can be pronounced," the court said.

A private building company used Sections 14 and 15(2) of the Arbitration and Conciliation Act, 1996 to ask for a new arbitrator to be chosen.

The company asked that the arbitrator's job be ended and that a new arbitrator be chosen.

Instead, the Court agreed to the Union of India's request for a limited extension of the arbitrator's mandate so that the arbitral decision could be delivered.

The disagreement began with a contract given by the Union of India in 2015–16 to finish certain tasks related to building homes in South Delhi for officers, JCOs, and ORs.

Arbitration was called in 2019 after disputes arose. Following the death of the initially appointed arbitrator, a retired Supreme Court judge was named in December 2021 to continue the proceedings from the stage at which they were left.

By the time of this appointment, pleadings were largely complete, and the matter was at the stage of final arguments.

The arbitrator finally heard final arguments and reserved the award in July 2024. However, the award was not pronounced even thereafter, resulting in multiple extensions of the mandate, the last of which ended on September 30, 2025.

The contractor claimed that the award had been delayed by around 17 months, and contended that the arbitrator's mandate had come to an end by efflux of time. The contractor, therefore, sought the arbitrator's replacement.

The Union of India opposed such substitution and sought a short extension, pointing out that after expiry of the last mandate, the arbitrator had written to the parties in November 2025, showing that the arbitral award had been made and was ready for pronouncement.

The bank claimed that replacing the arbitrator at this stage would result in a third round of adjudication and lead to wastage of time, effort, and costs already incurred.

Agreeing with this argument, the High Court held that the facts of a Supreme Court decision (Mohan Lal Fatehpuria v. M/s Bharat Textiles & Ors) relied upon by the contractor to argue that the arbitrator's mandate was over were distinguishable.

The Court noted that after the present petition was filed, the arbitrator had issued communications saying that the arbitral award had been prepared and was ready for pronouncement.

The Court observed that substantial judicial time and effort had been expended in the case and that the arbitral process had reached its final stage.

Therefore, it declined to order a substitution of the arbitrator.

"Substitution of the Arbitrator at this point would result in avoidable duplication of effort and further delay, contrary to the goal of expeditious dispute resolution under the Arbitration and Conciliation Act, 1996," the Court held.

Relying on the Supreme Court's decision in Rohan Builders (India) Private Limited v. Berger Paints India Limited, the High Court ruled that this was a case where the arbitrator's mandate could be regularised.

The High Court held that the balance of convenience lay in allowing a short extension to enable the pronouncement of the arbitral award rather than unsettling the proceedings by ordering substitution of the Arbitrator at the final stage.