

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

Date of Hearing : 30<sup>TH</sup> November, 2010

Date of Decision : 24<sup>th</sup> December, 2010

**+ CM No.15337/2010 (delay) & FAO(OS) No.537/2010**

SOUTH INDIA SHIPPING & EXPORT CO. (SISECO)

...APPELLANT

Through: Mr.Sumit R.Sharma, Advocate,  
for Mr.Ramakant Gaur counsel for the  
Appellant

Versus

TRIBAL COOPERATIVE MARKETING DEVELOPMENT  
FEDERATION OF INDIA LTD.,(TRIFED) ...RESPONDENT

Through: Mr.Alakh Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN**

**HON'BLE MR. JUSTICE G.P.MITTAL**

1. Whether reporters of local papers may be allowed to see the Order?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

### **J U D G M E N T**

**G.P. MITTAL, J.**

1. The Appellant impugns the Order dated 02.04.2009

passed by the Learned Single Judge, whereby the Objections under Section 34 of the Arbitration & Conciliation Act, 1996 ('A&C Act') preferred by the Appellant were dismissed on the ground that the Appellant has not been able to disclose any ground to bring his case under Section 34 of the A&C Act.

2. Along with the Appeal, an Application under Section 5 of the Limitation Act, 1963 has also been filed for condonation of delay of 433 days in filing the Appeal. According to the Appellant, instead of filing an Appeal, as provided under Section 37 of the A&C Act, the Appellant mistakenly preferred SLP bearing No.CC.6080/2010 against the impugned order. However, vide Order dated 14.05.2010, the Hon'ble Supreme Court allowed the Appellant to withdraw the Appeal with liberty to seek appropriate remedy under law against the Impugned Order dated 02.04.2009.
3. It is the case of the Appellant that the Appeal was filed on 9<sup>th</sup> July, 2010 as soon as the Appellant received the Order from the Hon'ble Supreme Court. According to the Appellant, it has got a good case on merits and, thus, the delay of 433 days in filing the Appeal may be condoned.

4. The courts normally do not throw away the meritorious lis on hypertechnical grounds. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit.
5. Principles enunciated for condonation of delay are well settled. Expression 'sufficient cause' should be given liberal interpretation so as to advance substantial justice between the parties. (*Balwant Singh Vs. Jagdish Singh*

(2010) 8 SCC 685; *State of Karnataka Vs. Y. Moideen Kunhi (Dead) By LRs and Others* (2009) 13 SCC 192; *Ram Nath Sao Vs. Gobardhan Sao* (2002) 3 SCC 195; *N. Balakrishnan Vs. M. Krishnamurthy* (1998) 7 SCC 123; *G.Ramegowda, Major and Others Vs. Special Land Acquisition Officer, Bangalore and Basavalingappa Vs. Special Land Acquisition Officer, Bangalore*, (1988) 2 SCC 142). It is not the length of delay which is material for condonation of delay in filing an appeal but the acceptability of the explanation. There may be cases where a few months' delay may not be condoned as an applicant has no reasonable explanation to offer for the same, yet there are cases where delay of several years has been condoned. (*State of Nagaland Vs. Lipok Ao and Others* (2005) 3 SCC 752; *Ramnath Sao Vs. Gobardhan Sao* (2002) 3 SCC 195; *M.K.Prasad Vs. P. Arumugam* 2001 (6) SCC 176; *State of Bihar Vs. Kameshwar Prasad Singh and Another* 2000 (9) SCC 94; *N.Balakrishnan Vs. M.Krishnamurthy* (1998) 7 SCC 123). The law that each day's delay must be explained has mellowed down yet it has to be shown by the applicant that there was neither any gross negligence nor any inaction, nor want of bonafides.

6. Turning to the facts of the instant case, it may be mentioned that the Impugned Order was passed on 2<sup>nd</sup> April, 2009. The Appellant says that instead of filing the Appeal in this Court, it has filed the SLP. There may be a bonafide mistake in choosing the forum and in a given case, it may amount to sufficient cause. It may, however, be seen that even if the Appellant is given latitude of 90 days in preferring the SLP, the same could have been filed in the Hon'ble Supreme Court sometime in August, 2009. Though the Appellant has not given the date of filing the SLP, yet a reference to para 2 of the Application would reveal that the SLP bearing No.CC.6080/2010 is claimed to have been filed by the Appellant. This means that the SLP was filed only in the year 2010. The SLP came to be withdrawn vide Order dated 14.05.2010 of the Hon'ble Supreme Court. The Appellant has not placed on record any copy of the SLP or even the Order of the Hon'ble Supreme Court, whereby the Appeal was dismissed as withdrawn. It seems that the Appellant had been prosecuting its lis at its pleasure, whims and fancies. Furthermore, as per the case of the Appellant itself, the Appeal was dismissed as withdrawn on 14<sup>th</sup> May, 2010. The instant Appeal, according to the Appellant, was filed

in this Court on 9<sup>th</sup> July, 2010(though the same does not appear to be correct as per record) and the Appeal seems to be filed only on 6<sup>th</sup> August, 2010 and refilled on 25<sup>th</sup> August, 2010. Assuming that the Appeal was filed in this Court on 9<sup>th</sup> July, 2010, as claimed by the Appellant, the explanation given by it that the Appeal was filed as soon as copy of the Order of the Hon'ble Supreme Court was received, smacks of complete indifference on the part of the Appellant. As stated above, copy of the Order passed by the Hon'ble Supreme Court has not been placed on record. It is not disclosed by the Appellant as to whether it ever applied for any certified copy and when the same was supplied to it.

7. When a litigant seeks condonation of delay, he cannot be permitted to make casual statements. He has to explain the entire delay at least from the date when the limitation had expired. In the instant case, the Appellant has given a general and vague explanation. The conduct of the Appellant shows gross negligence, inaction and want of bonafides . There is no sufficient cause for condonation of delay. The Application for condonation of the delay and

the Appeal are, accordingly, dismissed.

All pending Applications stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**(VIKRAMAJIT SEN)**  
**JUDGE**

**December 24, 2010**  
RS/