

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARB.A. No. 14 of 2015

1. South Eastern Coalfields Limited, a Company Subsidiary of Coal India Ltd, An Undertaking of Government of India, Registered office at Seepat Road, Bilaspur, Through its General Manager, Johila Area, S.E.L. Nowrozabad, District Umaria, Madhya Pradesh

---- Appellant

Versus

1. K. J. Abraham, Public Works Contractor, R/o. Kudilil Kuruppanthara, P.O. Manjoor, Kottayam Dt. Kerala 686603

---- Respondent

For Petitioner	:	Shri R.K. Gupta, Advocate
For Respondent	:	Shri N. Naha Roy, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03/08/2015

1. Heard.
2. The instant appeal is delayed by 1007 days. On perusal of the record and documents filed along with the appeal would show that the order dated 13/03/2012 was passed by the Court of District Judge in MJC No. 112/07, is under challenge.
3. By such order, adjudication of application was made under Section 34 read with Section 2 of the Arbitration and Conciliation Act, 1996. The documents Ex.D/1 would show that initially against that order passed by the District Judge, an appeal was preferred by the petitioner. The said appeal was registered as

Miscellaneous Appeal bearing M.A. No. 01/2013. Subsequently when the case came up for hearing before this Court on 07/05/2013 the said appeal was dismissed as withdrawn with liberty to file a duly constituted appeal. While the said miscellaneous appeal was withdrawn at the request of the petitioner, all the documents were returned. Subsequent to it an arbitration appeal was preferred by the petitioner bearing Arbitration Appeal No. 75/2013 on 27/08/2013 i.e. after more than three months of the withdrawal of the miscellaneous appeal. On 08/10/2013 application seeking to exempt to file certified copy of the order of District Judge. By such order the permission to seeking exemption to file certified copy of order was dismissed and the appellant was directed to file certified copy of the order of District Judge. Thereafter the certified copy of the order which was under challenged was not placed on record for a long time. Subsequently, after 08/10/2013 the matter came up for hearing after almost two years i.e. on 03/03/2015 on the fact since the certified copy of the order was not filed, the appellant withdrew the Arbitration Appeal with liberty to file a duly constituted appeal. The said Arbitration Appeal No. 75/2013 was under Section 37 of the Arbitration and Conciliation Act, 1996. Presently the present appeal is filed with the certified copy of the original order dated 13/03/2012, passed by the District Judge.

4. Learned counsel for the appellant would submit that the delay occasioned is *bonafide* and would further submit that since the

appeal was filed before the wrong forum, consequently the delay of 1007 days in filing the appeal may be condoned in facts of the case.

5. I have gone through the record. Initially the impugned order was passed in M.J.C. No. 112/2007, passed by the District Judge was challenged in M.A.(C) No. 1 of 2013 before the High Court on 01.01.2013. Thereafter, after four months on 07/05/2013 when it was found that the appeal is not tenable then it was withdrawn with liberty to file a duly constituted appeal. The appeal under Arbitration Act was subsequently preferred on 27/08/2013 as per Annexure D/3 thereby delay in between 07/05/2013 to 27/08/2013, nothing is placed on record, why such delay has occasioned.

6. The Arbitration appeal was preferred on 27.08.2013 as per Annexure D-3. The said arbitration appeal came up for hearing on 08.10.2013 and an application was filed to exempt to file the certified copy of the order sheet of District Judge. The said prayer seeking exemption to file certified copy of order under challenge was dismissed on 08.10.2013. It is not known why the certified copy of order under challenge was not filed. The appellant if had been serious to contest the appeal could have filed with the copy of the order of District Judge at first instance alone as there was no valid reason existed for such non-filing.

7. The records further reveal that after rejection of such application

to exempt to file certified copy of order under challenge on 08.10.2013, the appellant again became dormant and the certified copy of order was not placed on record. Lastly, the said arbitration appeal came up for hearing again on 03.03.2015, almost after two years and till then the certified copy of the order was not placed on record for the reasons best known to the appellant. Therefore, on 03.03.2015, the said arbitration appeal stood withdrawn with liberty to file a fresh appeal.

8. Normally, in order to condone the delay in appeal liberal approach are adopted by Court. However, if such delay are deliberate and issue have been dealt in casual manner, then in such eventuality, the delay can not be claimed as a matter of right. In the instant appeal, the delay has occasioned due to casual approach to the issue with all non-seriousness. The delay in the intermetant period remained unexplained. Therefore, taking the totality of the case, the delay as has been projected cannot be termed as *bonafide* so as to condone the same. Therefore, I am not inclined to entertain the application to condone the delay and therefore, it is dismissed.

9. In a result, the arbitration appeal is also dismissed.

Sd/-

(Goutam Bhaduri)
Judge