

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

CRP.No. 545 of 2014 ()

**I.A.NO.5505 OF 2013 IN UNNUMBERED OP(ARB) OF 2013 OF DISTRICT COURT,
ERNAKULAM**

PETITIONER/RESPONDENT :

**SHRIRAM TRANSPORT FINANCE CO.LTD.
IST FLOOR, CEEPEES BUILDINGS,
OPP.ST. JOSEPH HIGH SCHOOL ROAD,
ANGAMALY REPRESENTED BY ITS POWER OF
ATTORNEY HOLDER SRI.RAJU THOMAS.**

**BY ADVS.SRI.T.P.RAMACHANDRAN (THACHETH)
SMT.DHANYA BABU
SMT.P.A.PRIYA
SMT.N.G.SINDHU
SRI.M.LIJU**

RESPONDENT/PETITIONERS:

- 1. BABU K.S.,
S/O KANI, RESIDING AT ANANTHAKKATTUPARAMBIL,
KORATTY, CHALAKKUDY, THRISSUR, PIN - 680 308.**
- 2. FATHIMA,
W/O.ISMAIL, AIKKALPARAMBATHU HOUSE
ANNAMANADA GRAMA PANCHAYAT, KORATTY,
CHALAKKUDY, THRISSUR, PIN - 680 308.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10-08-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SUNIL THOMAS, J.

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C.R.P.No.545 of 2014

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Dated this the 10th day of August, 2015

ORDER

The revision petitioner initiated the arbitration proceedings as ARC No. 1091/2011 for the recovery of sum of Rs.11,75,515/-. The respondents inspite of notice, remained absent and an arbitration award was passed exparte on 22.11.2011. Thereafter, the execution proceedings were initiated by the revision petitioner herein for execution of the award. At that juncture, the respondents herein filed I.A.No.5505/2013 in unnumbered O.P. (Arbitration)of 2013 before the District Court, Ernakulam, under Section 5 of the Limitation Act, with a prayer to condone the delay of 661 days in filing application under Section 34 of the Arbitration and Conciliation Act. It was stated that the arbitral award was not served on the respondents herein and they came to know about the award only when a copy of the arbitral award was handed over to them in execution proceedings, by the learned counsel for the revision petitioner herein.

2. The revision petitioner though appeared before the court below did not file an objection. The court by the impugned order allowed the application and condoned the delay on the ground that the available materials did not show that signed copy of the arbitral award was communicated to the petitioners herein. Since the limitation will begin to run only from the date of receipt of the signed copy award, the delay was condoned. This is assailed in this revision.

3. Heard the learned counsel for the revision petitioner. Though the respondents were served, they remained absent.

4. The learned counsel for the revision petitioner contended that since under Section 34 of the Arbitration and Conciliation Act, there is the specific

provision for filing the application to set aside the arbitral award with a provision to condone delay in appropriate case, by 30 days from its original period of limitation, an application under section 5 is not maintainable and the application should be one under Section 34(3) of the Arbitration and Conciliation Act. Further, the learned counsel relying on ground no.VI in the appeal memorandum contended that in the absence of any material to prove that whether the arbitral award had not been served or not, the original records itself should have been called by the court to peruse as to whether arbitral award had in fact been served on the appellant. Since the ground on which the delay was sought to be condoned was that the award was not served on the appellant, which was a negative fact, it could have been verified only by calling for the original records and verifying whether the arbitral award was served on the respondents herein, especially

when the revision petitioner was served with the copy of an arbitral award. The impugned order does not disclose as to whether the court below has verified with records. No other evidence could have been available either for proving the case set up by the respondent herein or to disprove that fact. In the light of above, impugned order without verifying the material records to satisfy itself as to whether award was served in fact served or not is legally not sustainable.

5. In the light of above, I find that the impugned order is not legally sustainable and is liable to be set aside. The revision petition is allowed. The impugned order is set aside and the matter is remanded to the court below, for a further consideration after verifying the arbitration file as whether the arbitral award had been forwarded to the respondent herein and if so, whether it

has been served. The court shall pass further orders accordingly thereafter. Both sides shall appear before the court below on 18.09.2015.

Sd/-
SUNIL THOMAS
JUDGE

skr

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PA to Judge