

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

OP(C).No. 1940 of 2015 (O)

PETITIONER:

**GMM PFAUDLER LTD. ,
VITHAL UDYOG NAGAR, KARAMSAD,
388 325, GUJARAT, REPRESENTED BY
ITS AUTHORIZED REPRESENTATIVE UDAYAN SHAH.**

**BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
ADV. SRI.S.SUJIN**

RESPONDENT:

**THE KERALA MINIERALS AND METALS LTD.,
SANKARA MANGALAM, CHAVARA,
KOLLAM - 681 583,
REPRESENTED BY ITS COMPANY SECRETARY.**

BY SMT.LATHA KRISHNAN

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1940 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1. TRUE COPY OF THE IA 669/15 IN OP(ARB)205/12.

EXHIBIT P2. TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT.

EXHIBIT P3. TRUE COPY OF IA 1500/15 IN OP(ARB)NO.205/12 DATED 28.7.15.

EXHIBIT P4. TRUE COPY OF THE ORDER DATED 31.7.15 IN IA 669/15 AND 1500/15 IN
OP(ARB) NO.205/12 OF THE COURT OF THE IST ADDITIONAL DISTRICT
JUDGE, KOLLAM.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

O.P.(C) No.1940 of 2015

Dated this the 7th day of September, 2015

JUDGMENT

The petitioner, challenging an order passed by the 1st Additional District Judge, Kollam to restore O.P.(Arb) No.205/2012, have filed this original petition.

2. The petitioner filed an application to set aside the arbitration award. The respondent also filed an application to set aside the award as O.P.(Arb) No.194/2012. In fact, both applications were dismissed for want of prosecution. Subsequently, the application filed by the respondent as O.P.(Arb) No.194/2012 was restored. The petitioner's application for restoration was dismissed for the reason that the petitioner filed the application more than one year after the dismissal.

3. The petitioner's case is that the counsel was not aware of the posting of the case on the day, it was dismissed and non-appearance was not intentional. The petitioner also attributed negligence on the part of the Advocate clerk in taking note of the date.

4. This Court is of the view that when a substantial challenge is made against the Arbitration award and other original petition is pending, challenge in the arbitration award filed by the respondent, substantial justice demands for restoration of the original petition filed by the petitioner. The laches on the part of the petitioner can be remedied by imposing costs. The laches, necessarily, should not result in dismissal of the restoration application unless the same cannot be remedied. Therefore, this Court is of the view, the impugned order has to be set aside. The original petition has to be restored on file on payment of costs of Rs.10,000/- to be paid by the petitioner.

The costs of Rs.5,000/- shall be paid to the Kerala Mediation Centre attached to the High Court and the balance costs of Rs.5,000/- shall be paid to the counsel appearing for the respondent before the court below. The costs shall be paid within three weeks from the date of receipt of a copy of this judgment.

The original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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