

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.Nos.420 to 425 of 2011

M/s.IndusInd Bank Ltd.,
A Company registered under
the Companies Act of 1956
registered office at No.2401,
General Thimiah Road,
(East Street) Cantonment, Pune 411 001
carrying on business of banking and
it is regulated by the RBI and
Other relevant Acts.
Rep. by Mrs.Meera
At No.115 and 116, G.N.Chetty Road,
T.Nagar, Chennai 600 017.
now represented by P.Ramalingam ..Appellant in all OSAs./
1st respondent/
1st respondent
versus
1.Joseph Rajan Fernandes,
2.Mary Fernandes ..Respondents/Applicants/
Petitioners in all OSA's
3.S.G.Ramesh Kumar ..2nd Respondent/2nd Respondent

Appeals filed under Order 36 Rule 9 of Original Side Rules
read with Clause 15 of the Letters Patent Act, against the Order
dated 21.09.2011 passed in A.Nos. 2932, 2933, 2934, 2935, 2936
and 2937 of 2011 in OPD.Nos.43701, 43702, 43703, 43704, 43705
and 43706 of 2010.

For Appellant .. Mr.S.R.Sundar in all OSA's

For Respondents .. Mr.A.Palaniappan for R.1 and R.2
in all OSA's

C O M M O N J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The appeals are directed against the impugned order dated 21.09.2011 of the learned Single Judge condoning the delay in filing objections to an ex parte award dated 11.12.2009 passed in favour of the appellant and against the first respondent by the second respondent/Arbitrator. The impugned order is predicated only on the ground of the delay being 28 days and thus was condoned. Nothing more nothing less.

2. Learned counsel for the appellants submits that the delay in filing is much more than 28 days. In this behalf, he states that even assuming what the first respondent states is correct - that a certified copy was obtained by the first respondent on 18.12.2010, still the filing on 06.04.2011 would be beyond the period of 3 months. The period is extendable by 30 days, if sufficient cause is shown beyond which no further extension can be granted, in view of the Judgment of the Hon'ble Supreme Court in Union of India vs. Popular Construction Company reported in (2001 (8) SCC 470). The delay has been condoned as if it was in routine without sufficient cause being shown, by taking the relevant dates as per records and submissions of the learned counsel for the appellant before the learned single Judge.

3. On the other hand, learned counsel for the first respondent states that the respondent was never served with a copy of the award and objections were filed without obtaining a certified copy of the award and thus it was returned under objection. It is thereafter that the certified copy of the award was applied for and the delay in refiling was condoned by the learned Master.

4. In our view none of the above facts have emerged from the impugned order. It is trite to say that delay in refiling an Arbitration matter cannot be treated routinely when there is no provision for condonation of delay in case of the delay in filing being beyond the period of 120 days. The aspect of delay in refiling has been dealt with by the Division Benches of Delhi High Court taking into account the judicial precedents of the Hon'ble Supreme Court, in which the Special Leave Petition filed was dismissed, in National Project Construction Corporation Ltd., vs. Sadhu Singh and Company (2013) ILR I Delhi 99), and the discussion in this behalf qua the earlier Judgment is contained as under:

''2.We have observed in the case of Union of

India v. Jia Lall Kishori Lall (P) Ltd., and Another (FAO(OS)334/2012) decided on 27.07.2012 as follows:

We may notice that the aspect of delay in re-filing in matters pertaining to objections to award has received the attention of this Court. This is so as by inordinate delay in re-filing, a party cannot be permitted to do what it otherwise is not entitled i.e., the period of limitation operating in view of the provisions of the said Act. The views expressed by the Division Bench in the case of The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co., and other connected matters; MANU/DE/3065/2010: 2010 (120) DRJ 615, deal with this issue. There a finding has been reached that delay in re-filing is not to be condoned in routine. A special leave petition filed in one of the connected matters to The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co's case (supra) against the said order stands dismissed on merits after condoning the delay. The Division Bench after taking into account the pronouncement in Union of India v. Popular Construction Company; MANU/SC/0613/2001: (2001) 8 SCC 470 observed that in matters of condonation of delay in re-filing the petition, a stricter scrutiny, than is done while considering an application for condonation of delay filed under Section 5 of the Limitation Act, 1963, has to take place keeping in mind that the total permissible period within which the application can be permitted to be filed under Section 34 of the said Act is 3 months plus an additional 30 days under Section 34(3) of the said Act. Thus, if the delay in re-filing exceeds this period, then the scrutiny becomes more rigorous and there has to be satisfactory and credible explanation for the delay. Otherwise, the legislative object of not permitting delayed objections from being filed gets defeated.''

5. Be that as it may, there are contentions on behalf of the appellants as to how calculation of limitation should be made in the present case, attributing knowledge to the first respondent prior to the date on 08.12.2010.

6. We are of the view that without the factual discussion in this behalf, the impugned order predicated on supposedly an admitted situation of delay of 28 days cannot be sustained and thus, has to be set aside and the matter remitted back to the learned single Judge for re-consideration, so that both counsels

can assist fully on the factual matrix relating to the period for which delay is sought to be condoned. A.Nos.2932 to 2937 of 2012 in OPD.Nos.43701, 43702, 43703, 43704, 43705 and 43706 of 2010, be listed before the learned single Judge on 20th October, 2016.

7. The appeals are accordingly allowed, leaving the parties to bear their own costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ksr

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The Sub Assistant Registrar,
Original Side, High Court, Madrs.

+ 6 ccs to Mr.A.Palaniappan, Advocate Sr.53352, 53353, 53354, 53355, 53356 & 53357

+ 6 ccs to Mr.K. Moorthy, Advcoate SR.533393, 53392, 53394,,, 53391, 53390 and 53395/16

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