

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23RD DAY OF AUGUST 2017

THE HON'BLE DR.JUSTICE ANITA SUMANTH

A.NOS.2211 and 2212 of 2017

in

A.No.5837 of 2015

in

O.P.D.No.19040 of 2013

In the matter of Arbitration  
and Conciliation Act, 1996  
and Disputes between  
Mrs.S.Santhi and M/s.Angel  
Broking Limited and in the  
matter of Arbitration  
Agreement dated 23.05.2008.

M/s.Angel Broking Ltd,  
Represented by its Authorised Signatory  
Mr.G.Dinesh and having its registered  
Office at, G1, Akruti Trade Centre,  
No.7, MIDC Road Andheri(E)  
Mumbai 400 093

...Petitioner

Versus

1.Mrs.S.Santhi, W/o.G.Saravanan,  
33/6, Duraisamy Naidu Street,  
Dharmapuri, Tamilnadu.

...1<sup>st</sup> Respondent

2.Justice K.Sampath (Retd),  
Arbitrator, National Stock Exchange of India Limited,  
2nd Floor, Isphani Centre,  
Door No:123-124, Nungambakkam High Road,  
Nungambakkam,  
Chennai-600 034

...2<sup>nd</sup> Respondent

A.No.5837 of 2015:

M/s.Angel Broking Ltd,  
Represented by its Authorised Signatory  
Mr.G.Dinesh and having its registered  
Office at, G1, Akruti Trade Centre,  
No.7, MIDC Road Andheri(E)  
Mumbai 400 093

...Applicant/Petitioner

Versus

1.Mrs.S.Santhi, W/o.G.Saravanan,  
33/6, Duraisamy Naidu Street,  
Dharmapuri, Tamilnadu.

2.Justice K.Sampath (Retd),  
Arbitrator, National Stock Exchange of India Limited,  
2nd Floor, Isphani Centre,  
Door No:123-124, Nungambakkam High Road,  
Nungambakkam,  
Chennai-600 034

...Respondents/Respondents

Application praying that this Hon'ble Court be  
pleased to condone the delay of 740 days in representing  
the above O.P.Diary No.19040 of 2013.

A.No.2211 of 2017:

Mrs.S.Santhi, W/o.G.Saravanan,  
33/6, Duraisamy Naidu Street,  
Dharmapuri, Tamilnadu.

...Applicant/1<sup>st</sup> Respondent

-Vs-

1.M/s.Angel Broking Ltd,  
Represented by its Authorised Signatory  
Mr.G.Dinesh and having its registered  
Office at, G1, Akruti Trade Centre,  
No.7, MIDC Road Andheri (E)  
Mumbai 400 093

...1<sup>st</sup> Respondent/Applicant

2.Justice K.Sampath (Retd),  
Arbitrator, National Stock Exchange of India Limited,  
2nd Floor, Isphani Centre,  
Door No:123-124, Nungambakkam High Road,  
Nungambakkam,  
Chennai-600 034

...2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

Application praying that this Hon'ble Court be  
pleased to pass an order to set aside the order of the  
learned Master made in A.No.5837 of 2015 in O.P.D.No.19040  
of 2013 dated, 24.01.2017 and allow the appeal under Order  
14 Rules of the High Court of Madras, Original Side 1956.

**A.NO.2212 OF 2017:**

Mrs.S.Sanathi, W/o.G.Saravanan,  
33/6, Duraisamy Naidu Street,  
Dharmapuri, Tamilnadu.

...Applicant/Applicant/1<sup>st</sup> Respondent

-Vs-

1.M/s.Angel Broking Ltd,  
Represented by its Authorised Signatory  
Mr.G.Dinesh and having its registered  
Office at, G1, Akruti Trade Centre,  
No.7, MIDC Road Andheri (E)  
Mumbai 400 093

...1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Petitioner

2.Justice K.Sampath (Retd),  
Arbitrator, National Stock Exchange of India Limited,  
2nd Floor, Isphani Centre,  
Door No:123-124, Nungambakkam High Road,  
Nungambakkam,  
Chennai-600 034

...2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

Application praying that this Hon'ble Court be pleased to pass an order to STAY the operation of the impugned order of the Id. Master made in A.No.5837 of 2015 in O.P.D.No.19040 of 2013 dated, 24.01.2017 pending disposal of the appeal under Order 14 Rule 12 of the Rules of the High Court of Madras, Original Side, 1956.

This Application coming on this day before this court for hearing the court made the following order:

The Original Petition before me was filed on 08.07.2013 within the time permitted under Section 34 of the Arbitration and Conciliation Act 1996 (in short 'the Act'). The petition appears to have been returned for rectification of defects on 22.07.2013 and re-presented on

16.04.2014 when the petition was yet again returned by the Registry on 21.5.2014. It was not re-presented till 11.8.2015. In the meantime, the present counsel received the brief from the erstwhile counsel on 11.8.15 and re-presented the same on the same day with a delay of 740 days.

2. The learned Master considering Application No.5837 of 2015 seeking condonation of delay in re-presentation and after hearing both sides, allowed the application upon payment of cost of Rs.3,000/- on or before 03.02.2017. The cost has been remitted and that is how the matter is now posted before this Court.

3. Application No.2211 of 2017 seeks an order to set aside the order of the learned Master made in A.No.5837 of 2015 in O.P.D.No.19040 of 2013 dated 24.01.2017 and to allow the appeal under Order 14 Rule 12 of the Rules of the High Court of Madras, Original Side 1956.

4. Application No.2212 of 2017 seeks an order to stay the operation of the impugned order of the learned Master made in A.No.5837 of 2015 in O.P.D.No.19040 of 2013 dated 24.01.2017 pending disposal of the appeal under Order 14 Rule 12 of the Rules of the High Court of Madras, Original Side, 1956.

5. Heard Mr.S.Sathiaseelan, learned counsel appearing for the applicant and Mr.S.A.Sayed Shuhaibb, learned counsel appearing for the respondents.

6. The facts as they present themselves to me are as follows:

Mrs.S.Santhi was maintaining a Demat and Trading Account with Angel Broking Limited. Various disputes arose inter se the parties and allegations and counter allegations made that had been presented for Arbitration before Justice K.Sampath. An award dated 10.05.2013 was passed directing Angel Trading to pay a sum of Rs.6.60 lakhs to Mrs.Santhi with interest at the rate of 9% per annum.

7. Angel Trading filed an Original Petition under Section 34 of the Arbitration and Conciliation Act on 08.07.2013. The petition was filed by four counsels, M.Sivavarthanan, Lenin J., K.S.Karthik Raja and A.Esakiappan. Simultaneously therewith, Angel trading intimated the National Stock Exchange of the award of the learned Arbitrator and the challenge filed in terms of section 34 of the Act. Angel Trading specifically brought to the notice of the NSE the automatic stay of enforcement of award in terms of Section 36 of the Act.

8. Thereafter the original petition appears to have been returned by the registry on 22.7.2013 for rectification of defects and was re-presented on 16.4.2014. Upon return of the papers by the Registry once again for rectification of defects on 21.5.14, the matter seems to have slipped into hibernation and no steps were taken to comply with the return by the Registry and for re-

presentation of the petition. It was only when an Execution Petition in E.P. No.24/2015 was moved before the X Assistant Judge, City Civil Court, Chennai by the judgment debtor that Angel Trading represented the petition with a delay of 740 days. Condonation of the delay in re-presentation of the defective O.P was sought and the defence put forth was that the matter was being pursued by Mr.J.Lenin, Advocate, who was taken unwell during the period July 2013 to August 2015. Medical records were produced in support of the delay for which condonation was sought.

9.Mr.S.Sathiaseelan, counsel appearing for the applicant would point out that the medical records do not indicate anything very alarming that had befallen the counsel. I refrain from comment for the reason that neither the Court nor the counsel would be competent to comment on the nature or seriousness of the ailments stated to have been suffered by Mr.Lenin.

10. This fact does not, however, exonerate the other counsel whose names are on record as well as the petitioner and who could, and should, very well have pursued the re-presentation of the matter and consequent listing before the Court. The situation that reveals itself is that the counsels as well as the judgment debtor appear to have lost sight of the matter. This was however, subsequent to their having taken advantage of the provision for automatic stay of the award available at the relevant point in time.

Though the learned counsel for the applicant would attribute malafides to the respondent stating that the careless approach to the condonation and listing of the original petition was on purpose and solely to protract the proceedings as long as possible while enjoying a stay of the award, I am inclined to believe that the delay was occasioned on account of carelessness, not necessarily wilful.

11. The judgments referred to by the learned counsel for the applicant, *Competent Placement Services (Regd.) vs. Delhi Transport Corporation*, (2011 (1) ARBLR 1 Delhi), *H.Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another* ((2015) 1 SCC 680.) and *Tamizhaga Panchalai Thozhilalar Sangam vs. The Presiding Officer and others* (2012 SCC Online Mad 3105.) are to the effect that the law of limitation is based on a sound public policy and in the absence of a bonafide reason, the application for condonation of delay ought not to be allowed casually.

12. The respondents on the other hand, would refer to a decision of the Kerala High Court in *Kombi vs. The National Highway Authority of India* (2013 (2) ARBLR 131 (Kerala)) holding that the Court has the inherent power to condone the delay in re-presentation of the original petition beyond the statutory period as set out under section 34 of the Act and the proviso thereunder.

13. There is no quarrel with the proposition that the Court is empowered to condone any amount of delay in re-presentation, if properly explained, and if the Court is convinced that the delay was occasioned for bonafide and genuine reasons despite due diligence having been exhibited by the party seeking condonation.

14. In the present case, the petitioner, unfortunately, has not been diligent in pursuing its legal remedies. Even though a case of re-presentation is not confined to the restrictions of time placed by Section 34 and the proviso thereunder, a satisfactory explanation has to be given as to why the re-presentation was not effected within a reasonable period. In the present case, the explanation offered is the ill health of Advocate J.Lenin. As stated earlier, I do not wish to dwell on the veracity or the seriousness of the medical reports filed. Suffice it to say that even assuming that Mr.Lenin was indisposed to such an extent that he had been unable to pursue the re-presentation of the matter, the other Advocates in the firm, who were also on record, as well as their client ought to have stepped up and done so.

15. I have, vide order dated 04.08.2017 in A.No.3513 of 2017 in O.P.No.350 of 2017 passed in similar circumstances, held that while there is no fetter imposed by law for condonation of delay in re-presentation, the circumstances leading to the delay and the explanation offered by the party seeking condonation cannot be lost



sight of while considering the application. It is also necessary to bear in mind that proceedings for arbitration constitute a specialised form of dispute resolution and the demands of time are to be observed more stringently and strictly in such cases.

16. The circumstances laid out before me do not justify the condonation of delay of 720 days in representation. Accordingly, A No.2211 of 2017 is allowed and the Original Petition is rejected at the threshold. Consequently, A.No.2212 of 2017 is closed.

Sd/-A.S.M.J

23.08.2017

//Certified to be a true copy//

Dated this the      th day of                      2017.

EM/13.10.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.