

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 16TH DAY OF APRIL 2018

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

A.No. 1185 of 2018

in

A.No. 247 of 2017

in

O.P. D.No. 23419 of 2012

In the matter of Arbitration
& Conciliation Act 1996

and

In the matter of Arbitration
dispute between M/s. National
Building Construction
Corporation Ltd., New Delhi

and
Corporation of Chennai,
Chennai

And
in the matter of Arbitration
Award dated 31.05.2012.

Corporation of Chennai
Represented by S.E.Bridges Dept,
Ripon Building, EVR Road,
Chennai 600 003.

:Petitioner

सत्यमेव जयते

Vs

1. M/s. National Building Construction Corporation Limited
Lodhi Road, New Delhi 110 003.

2. A.V.Rangaraju
No.65/6, Sakthi Flats,
Kamarajar Salai, Virugambakkam,
Chennai 600 092.

3. Dr.D.Thirunavukkarasu,
60, Anjuman Nagar 3rd Street,
Ashok Nagar, Chennai 600 083.

4. E.K.Srinivsan
Block No.1, Flat No.C2,
Mayfair Apartments,
No.2A, LIC Colony Main Road,
Velacherry, Chennai 600 090.

: Respondents

A.No. 1185 of 2018

Corporation of Chennai
Rep.by S.E.Bridges Department,
Ripon Building, EVR Road,
Chennai 600 003.

:Applicant/Petitioner
(in both applications)

Vs

1. M/s. National Building Construction Corporation Limited
Lodhi Road, New Delhi 110 003.

2. A.V.Rangaraju
Presiding Arbitrator
No.65/6, Sakthi Flats,
Kamarajar Salai, Virugambakkam,
Chennai 600 092.

3. Dr.D.Thirunavukkarasu,
Arbitrator
Block No.1, Flat No.C-2
Mayfair Apartments,
No.2A, LIC Colony Main Road,
Velacherry, Chennai 600 090.

4. E.K.Srinivsan
Arbitrator
Block No.1, Flat No.C2,
Mayfair Apartments,
No.2A, LIC Colony Main Road,
Velacherry, Chennai 600 090.

: Respondents/Respondents
(in both applications)

Application praying that this Hon'ble Court may be
pleased to set aside the order dated 17.08.2017 made in
A.No.247 of 2017 in OPD.No. 23419 of 2012.

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

This application has been filed by the applicant
seeking to set aside the order dated 17.08.2017 made in

2.A contract for construction was entered into between the applicant and the first respondent. As dispute arose between the parties, the first respondent invoked the arbitration clause. An award was passed in favour of the first respondent, though not with respect to all the claims made. The applicant challenged the aforesaid award passed on 31.05.2012 by filing the original petition on 28.08.2012. It appears there was some return subsequently and the bundle was stated to have been missing. The execution petition was filed by the first respondent on 01.09.2016. Thereafter, there was an application by the applicant in A.No.247 of 2017 seeking to condone the delay of 1490 days in representing the papers. The learned Master was pleased to dismiss the application inter alia alleging that there is no material to substantiate the averment that requests have been made to trace out the missing bundle both orally and in writing. Challenging the same, the present application has been filed.

3.Learned counsel appearing for the applicant produced a copy of the letter dated 28.06.2016 to substantiate that letters were indeed given to post the matter. It is further submitted that papers were traced subsequently from the Registry and thereafter represented.

would submit that the delay has not been explained properly. It is not the case that the delay has occasioned due to the mistake committed by the lawyer. The application has been filed as an afterthought after the filing of the execution petition. Thus there is nothing wrong in the order passed by the learned Master. Accordingly, the application deserves to be dismissed.

5. We are dealing with the case involving two instrumentalities of state. One is the State Government entity and the other is the Central Government. There is a difference between the delay in representation and the delay in filing. In the case on hand, the letter produced by the counsel would show that some attack was made to post the matter. Secondly, the bundle was traced from the Registry and not from the counsel. Even otherwise, this Court can attribute the delay to the office of the counsel as against the applicant. Procedural law is a hand maid of justice. This Court has to condone the delay in making the parties to get adjudication on merit. It is not correct to state that averments made are not false. Therefore, this Court is of the view that in the interest of justice, this application will have to be ordered by setting aside the order of the Master so that there can be an adjudication upon merits. After all, condonation of delay in representation is a matter between the Court and the party,

though the same cannot be said in all circumstances, especially when subsequent developments have taken place. It is also to be noted that execution petition was filed only in the month of September 2016 and immediately thereafter, the application was filed seeking condonation of delay.

6. Considering the above, this Court is inclined to allow the application by setting aside the order of the learned Master. Accordingly, this application stands allowed.

7. Registry is directed to number the original petition and post the same on 13.06.2018. It is made clear that on that date, the main original petition itself will be taken up for final disposal.

Sd/-M.M.S.J

16.04.2018

//Certified to be a true copy//
Dated this the day of 2018

jj 13/08/18

COURT OFFICER

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