

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.1323 of 2017

and

C.M.P.No.18387 of 2017

1. Y.Krishnamoorthy
2. Y.Sugunamani
3.Y.Gerreshma .. Petitioners/Appellants

Vs.

1. The Addl. Chief Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.
2. The Arbitrator/District Registrar,
Chit Fund Cases,
Central Madras, Chennai-600 001.
3. The Foreman,
Sree Gokulam Chit & Finance Co. (P) Ltd.,
No.49, Arcot Road, Kodambakkam,
Chennai-600 024. ... Respondents/Respondents

Prayer: Writ Appeal filed Clause 15 of the Letters Patent against the order dated 17.07.2017 passed by the learned Single Judge in W.P.No.18008 of 2017 on the file of this Court.

Prayer in WP.No.18008 of 2017: Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records in respect of the order No: G.O.(D) No: 407 dated 11.11.2016 issued by the first respondent and quash the impugned order and directing the first respondent to condone the delay, and to allow the Appeal.

For appellant : No appearance

For respondents : Mr.Akhil Akbar Ali,
Govt. Advocate for RR-1 and 2
No appearance for R-3

JUDGMENT

(The judgment of the Court was delivered by M.Venugopal, J)

There is no representation on the side of the appellant and the third respondent. However, this Court has heard the learned Government Advocate appearing for the respondents 1 and 2. This Court has perused the relevant papers in the Writ Appeal and heard the learned Government Advocate appearing for the respondents 1 and 2 and disposing of the present Writ Appeal.

2. The Writ Appeal is filed challenging the order dated 17.07.2017 passed by the learned Single Judge in W.P.No.18008 of 2017 on the file of this Court.

3. According to the appellants, the issue involved in W.P.No.18008 of 2017 pertains to the condonation of delay in preferring the appeal before the first respondent. The grievance of the appellants appears to be that the first respondent, without providing an opportunity of hearing, had dismissed the appeal and had also not taken into account the legal position.

4. The appellants had taken a stand that the entire chit transaction took place in Vijayawada, Andhra Pradesh, but the Arbitration Proceedings commenced in Chennai, beyond the jurisdiction, by the second respondent and as such, ex-parte award was passed in the year 2009.

5. Yet another stand taken by the appellants is that the second respondent-Arbitrator had failed to comply with Sections 34(3) and 31(5) of the Arbitration and Conciliation Act, 1996. In terms of Section 31(5) of the said Act, the copy of the award duly signed by the Arbitrator, should have been delivered to the parties to the proceedings concerned. According to the appellants, the Arbitrator had not delivered any award, much less the award duly signed by him and in fact, the certified copy of the award was applied on 30.06.2016 and the same was made ready and delivered on 30.06.2016.

6. The appellants, in reality, had assailed the order passed by the first respondent and filed the present Writ Petition in W.P.No.18008 of 2017 and in the said Writ Petition, the copy of the award was enclosed. In this connection, the appellants had come out with a plea that the certified copy of the award contains the endorsement and the order was delivered only on 30.06.2016. But the appeal filed before the first respondent on 29.09.2016, which according to the appellants, was well within time. The learned Single Judge, without considering these aspects, had dismissed the Writ Petition merely on the ground that there was a delay in preferring the appeal before the first respondent.

7. The appellants also project an argument that while computing the period of limitation, it is to be considered after reading Sections 34(3) and 31(5) of the said Act, and the learned Single Judge should have disposed of the Writ Petition in the light of the decision of the Supreme Court reported in 2011 (4) SCC 616 (State of Maharashtra Vs. ARK. Builders Pvt. Ltd.), but however, the learned Single Judge had not looked into the aspect of computing the period of limitation in terms of the observations made in the aforesaid decision of the Supreme Court, and therefore, the appellants pray for allowing the present Writ Appeal.

8. It is not in dispute that in respect of the chit transactions between the appellants and the third respondent, the dispute came to be referred to the second respondent/Arbitrator and separate awards were passed against the appellants by the Arbitrator to the effect that the appellants are liable to pay the amount as per the award. The award came to be passed in the year 2009 and nearly after seven years, namely on 29.09.2016, the appellants had thought it fit to prefer the appeal before the first respondent with inordinate delay. In support of their contentions in regard to the condonation of delay, the appellants/writ petitioners had stated that they hail from Vijayawada, Andhra Pradesh and they could not read the proceedings of the second respondent/Arbitrator, which was in Tamil language and therefore, they could not follow the arbitration matters and ultimately, they were set ex-parte and award came to be passed by the second respondent/Arbitrator.

9. The learned Single Judge, at the time of passing the impugned order in the Writ Petition, had opined that the appellants/writ petitioners, except stating that they are natives of Vijayawada, Andhra Pradesh, etc., they had not assigned acceptable reasons for condoning the inordinate delay of nearly seven years and ultimately, for want of acceptable reasons, the learned Single Judge dismissed the Writ Petition by concluding that there is no error or irregularity in the order passed by the first respondent.

10. It is to be pointed out by this Court that ordinarily, in regard to the "condonation of delay matters", a Court of Law is to adopt a purposeful, meaningful, practical, pragmatic and rationale approach by condoning the delay in question. The maximum thing that would happen is that there is possibility of the concerned party's case to be heard on merits.

11. Per contra, if the "condonation of delay" petition is dismissed at the nascent stage, then there is a possibility that even a meritorious case would be thrown out at the earlier stage. By and large, no litigant would prefer any proceedings or

any application/petition before a Court with deliberate delay. In fact, he/she runs a grave risk in this regard. Even though, a Court of Law, while dealing with the condone delay petition, is to adopt a meaningful, purposeful, lenient and liberal approach so as to secure the ends of justice/advancing the cause of justice and also this Court, taking note of the fact that the length and breadth of delay is not the yardstick for the Court of Law to consider the aspect of delay, but yet, one cannot loose sight of an important fact that the writ petitioners or the parties concerned must offer a sufficient/good cause or convincing reason to the subjective satisfaction of the Court concerned with regard to the delay.

12. Equally, one cannot brush aside another fact that by virtue of an award, much less, ex-parte award in favour of the concerned person/party, the valuable right accrued to the concerned party, cannot be so easily displaced by a Court of Law by adopting a cavalier and whimsical fashion.

13. As far as the present case is concerned, the appellants, though before the learned Single Judge in the Writ Petition, came out with a plea that they are natives of Vijayawada, Andhra Pradesh and they could not read the proceedings of the second respondent/Arbitrator, which was in Tamil, and that was the handicap for them in not reading the case, and therefore, ex-parte award came to be passed, this Court is of the considered view that the appellants remained inactive and they had not taken necessary effective, efficacious and diligent steps in approaching the first respondent in filing the appeal and to file necessary application/petition to set aside the ex-parte award passed against them. In short, the reasons assigned by the appellants/petitioners in the Writ Petition that they are the natives of Vijayawada, Andhra Pradesh, etc., are not sufficient/good reasons and also those reasons even though they had assailed, in the considered opinion of this Court, are not a valid, bona-fide and acceptable one.

14. Inasmuch as this Court had not accepted the reasons assigned by the appellants/writ petitioners, as stated supra, the view taken by the learned Single Judge in dismissing the Writ Petition, in the earnest opinion of this Court, is free from any legal flaw.

15. Consequently, the Writ Appeal fails and in fine, the Writ Appeal is dismissed. The impugned order passed by the learned Single Judge is confirmed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

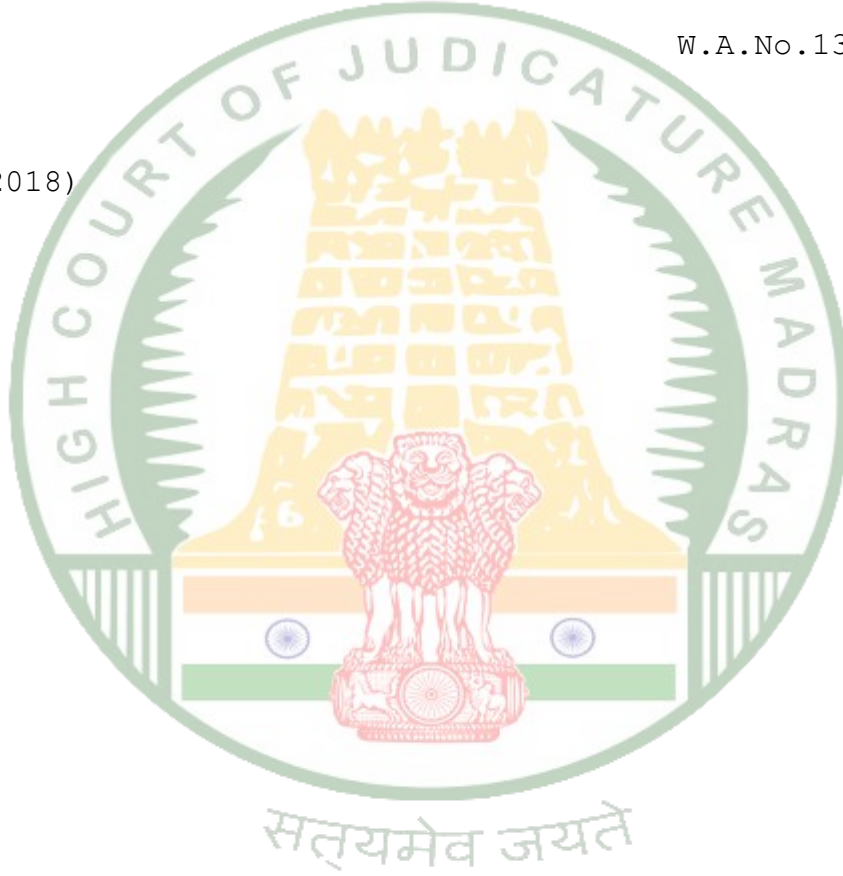
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To

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Chennai-600 009.
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W.A.No.1323 of 2017

MR (CO)
GN (14/03/2018)



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