

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

Civil Revision Petition No.3483 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan }

This revision is preferred, under Article 227 of the Constitution of India, against the order of the Chief Judge, City Civil Court, Hyderabad in I.A.No.4785 of 2017 in OPSR.No.25212 of 2016 dated 27.02.2018.

An application, to set aside the award passed in A.A.No.103 of 2013 dated 11.07.2016, was filed on 08.11.2016 beyond the three month period stipulated in Section 34(3) of the Arbitration and Conciliation Act, 1996 (for short "the Act") which expired on 10.10.2016. The said application was, however, filed within the extended period of 30 days as stipulated in the proviso to Section 34(3) of the Act. The fact, however, remains that, along with the application filed under Section 34 of the Act, the petitioner did not file the application to condone the delay in filing the O.P beyond 90 days and within 120 days. The petition was returned on 15.11.2016, but was re-presented only 10 months thereafter on 19.09.2017.

Sri V.Hariharan, learned counsel for the petitioner, would contend that the petition under Section 34 of the Act was filed within the extended period of 30 days in terms of the proviso to Section 34(3); failure to file an application to condone the delay within 120 days is not fatal; and, as long as the Court below was satisfied that there was sufficient cause for the petitioner in not filing the petition within 90 days, it was open to the Court below to consider the said application, for condonation, even if it is filed beyond the 120 day period.

On the other hand, Ms.Manasi Ganu, learned counsel appearing on behalf of the respondents, would submit that, in terms of the proviso

to Section 34(3) of the Act, the application to condone the delay is also required to be filed within the extended period of 30 days beyond the 3 month period; and as, admittedly, the petitioner filed the petition to condone the delay only on 19.09.2017, the Court below was justified in dismissing the I.A. Learned counsel would further submit that, in any event, the cause shown by the petitioner for condonation of delay is wholly insufficient.

The petition, to set aside the award, was filed under Section 34(3) of the Act on 08.11.2016 i.e 28 days beyond the 3 month period stipulated under Section 34(3) of the Act, but within the extended period of 30 days. On its being returned, an application to condone the delay was filed thereafter along with an application to condone the delay in re-presentation. As the petition, under Section 34 of the Act, was filed within the extended period of 30 days after expiry of the three month period stipulated in Section 34 of the Act, filing of an application to condone the delay thereafter would not mean that the petition was filed beyond limitation.

In the present case, as the petition under Section 34 of the Act was filed within the extended period of 30 days, the mere fact that the application to condone the delay was filed thereafter is not fatal; and the Court below erred in not entertaining the said application on the erroneous premise that it was filed beyond 120 days. The order of the Court below must be, and is accordingly, set aside on this ground alone. I.A.No.4785 of 2017 to condone the delay could only have been entertained by the Court below, if it was satisfied that the applicant was prevented for sufficient cause from making the application within the period of three months. The question, whether or not the petitioner had

shown sufficient cause, necessitates examination in the first instance by the Court below.

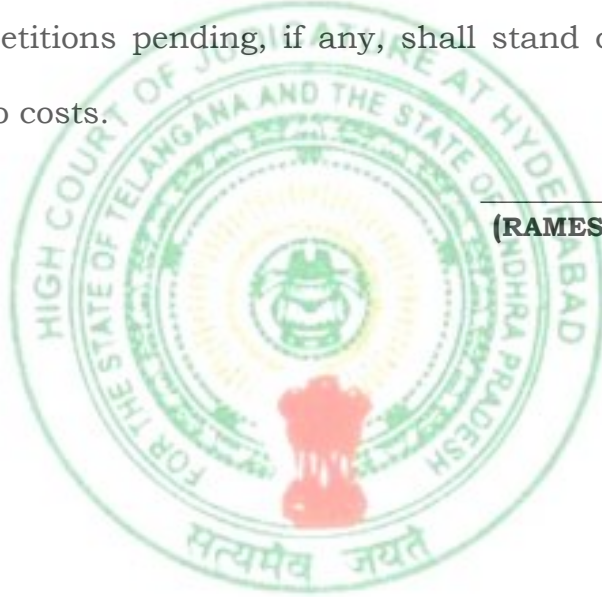
As, admittedly, the Court below has not examined whether or not sufficient cause was shown to condone the delay, we consider it appropriate to set aside the order under revision, restore I.A.No.4785 of 2017 to file, and direct the Court below to examine the said application on its merits, decide whether the petitioner has been able to show sufficient cause for not filing the petition under Section 34 of the Act within three months; and pass orders afresh in accordance with law.

The Civil Revision Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

30th July, 2018
JSU



THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI



Civil Revision Petition No.3483 of 2018

Date: 30.07.2018

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