

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF OCTOBER 2019

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.7249 of 2019

IN

O.P.DIARY NO.45886 OF 2019

In the matter of Arbitration &
Conciliation Act, 1996

and

In the matter of dispute
between M/s.Indian Oil
Corporation Limited and
M/s.N.R.Patel and Co.,
Chennai.

M/s.Indian Oil Corporation Ltd.,
Represented by DGM (Engineering), C.Rama Rao,
Ap State Office,
3-6-436 to 438,
2nd and 3rd Floor,
NASPUR, House,
Himayat Nagar,
Hyderabad-500 029. ..Applicant/Petitioner

सत्यमेव जयते
-vs-

M/s.N.R.P.Projects Private Limited,
Represented by its Partner,
Mr.HitechJ.Patel,
1st Floor, Desabandhu Plaza,
No.47, Whites Road,
Chennai-14. ..Respondent/Respondent

Application praying that this Hon'ble Court be pleased
to condone the delay of 133 days in Representing the
O.P.Diary No.45886 of 2019.

This Application coming on this day before this court
<https://hcservices.ecourts.gov.in/hcservices/>
for hearing the court made the following order:

This application is filed to condone the delay of 133 days in representing the O.P.Diary No.45886 of 2019.

2. I heard Mr.M.S.Krishnan, the learned Senior Counsel for the applicant / petitioner and Mr. Manoj Menon, the learned counsel for the respondent.

3. The learned Senior counsel narrated the facts leading to the filing of the present application. In specific, he pointed out that the Arbitral award was pronounced on 22.10.2018 and that thereafter, a corrected award was issued on 04.12.2018. Thus, he submitted that a petition under Section 34 of the Arbitration and Conciliation Act should have been filed within the prescribed period of three months from 04.12.2018. However, the said petition was presented on 02.04.2019 and returned on 10.04.2019. Thereafter, the petition was re-presented on 22.09.2019. While re-presenting the petition, he submitted that the original petition was not re-presented; instead, the petition was re-printed with a few changes and re-presented on 22.09.2019. He further submitted that an application to condone the delay was filed at the time of re-representation on 22.09.2019.

4. On the basis of the above facts, the learned Senior counsel for the petitioner submitted that the application to condone the delay in re-representation is liable to be allowed, in view of the fact that the mistake was a bona fide and inadvertent mistake and that the original petition that was presented on 02.04.2019 may be made as a part of the record. He also produced the original petition in this regard.

5. In response and to the contrary, the learned counsel for the respondent submitted that only the docket was re-presented on 19.09.2019 and not the original petition which had been presented on 02.04.2019. In fact, he submitted that even the docket indicates the name of the respondent as N.R.Patel and Company and not as N.R.P.Projects Private Limited, which is the correct name.

6. In any event, the submission of the learned counsel for the respondent is that the petition was represented on 19.09.2019, which is not only beyond the prescribed period of three months, but also beyond the 30 days period for consideration of an application to condone the delay. In support of his submission, he referred to the judgment of the Hon'ble Supreme Court in the case of **Simplex Infrastructure Limited Vs. Union of India ((2019) 2 SCC 455)**, (the Simple Infrastructure Case) where the Hon'ble Supreme Court, after referring to the earlier judgments in Popular Construction Company case and Consolidated Engg. Enterprises case, held that Section 5 of the Limitation Act does not apply to a petition filed under Section 34 of the said Act and that such a petition cannot be entertained upon expiry of the condone delay period of 30 days. In paras 17 and 18 of the said decision, it was held as follows:-

" 17. The appellant has, in this connection, relied on Union of India v Popular Construction Company (supra) and Consolidated Engineering Enterprises v Principal Secretary, Irrigation Department (supra) to support its case. On the other hand, it is the respondent's contention that there were no willful latches on its part and the delay was caused due to inevitable administrative difficulties of obtaining directions from higher officials.

18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 should be made within three months and the

period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate."

7. By relying upon the said judgment, he submitted that in this case even the condone delay petition was not filed on 02.04.2019 but was only filed on 24.09.2019.

8. He also relied upon the judgment of the Hon'ble Supreme Court in **State of Maharashtra Vs. Hindustan Construction Company Limited ((2010) 4 SCC 518)** (the State of Maharashtra Case) where, at para 32, the Hon'ble Supreme Court referred to the Division Bench judgment of the Bombay High Court in the case of Vastu Invest & Holidays (P) Ltd., where it was held that an amendment application cannot be filed after the expiry of the period of limitation, but held, in para 36, that such an amendment cannot be made at the Section 37 stage when the relevant grounds were not taken in the Section 34 petition. By relying on the aforesaid judgments, the learned counsel for the respondent submitted that the petition filed on 24.09.2019 cannot be entertained because it is beyond the period of limitation.

9. On considering the oral submissions and examining the records, it is evident that the petitioner presented the Section 34 petition on 02.04.2019. The endorsement made by the Registry to that effect evidences this submission. From the submissions and the original petition dated 28.03.2019, which was handed over by the learned Senior counsel for the applicant, it is also clear that instead of re-presenting the same petition on 19.09.2019, the petitioner has printed and enclosed a different petition with some variations.

10. I see no reason to doubt the statement of the petitioner that the petition dated 28.03.2019 was the petition that was originally presented on 02.04.2019. Therefore, the said original petition dated 28.03.2019 is taken on record and shall form a part of the record of the proceedings. If any additional grounds have been taken in the petition that was re-presented on 19.09.2019, it is open to the respondent to raise objections in this regard at the appropriate stage. In the light of the above conclusion that the petition dated 28.03.2019 was presented on 02.04.2019 and, thereafter, re-presented, albeit in the manner and form set out by the learned Senior Counsel for the petitioner, on 19.09.2019, the judgment in the Simplex Infrastructure case is not applicable. In other words, the presentation of the Section 34 petition on 02.04.2019 is beyond the prescribed three months period but within the 30 days period subsequent thereto when an application to condone delay may be considered. The other judgment in the State of Maharashtra case would be relevant only when the amended grounds are considered.

11. In view of the foregoing discussion on considering the averments in the affidavit in support of the application, I am of the view that this application is liable to be allowed. Accordingly, the delay of 133 days in re-presenting O.P.Diary No.455886 of 2019 is condoned.

The learned counsel for the petitioner is directed to serve a copy of the original petition dated 28.03.2019 on the learned counsel for the respondent.

Sd/.S.K.R.J.

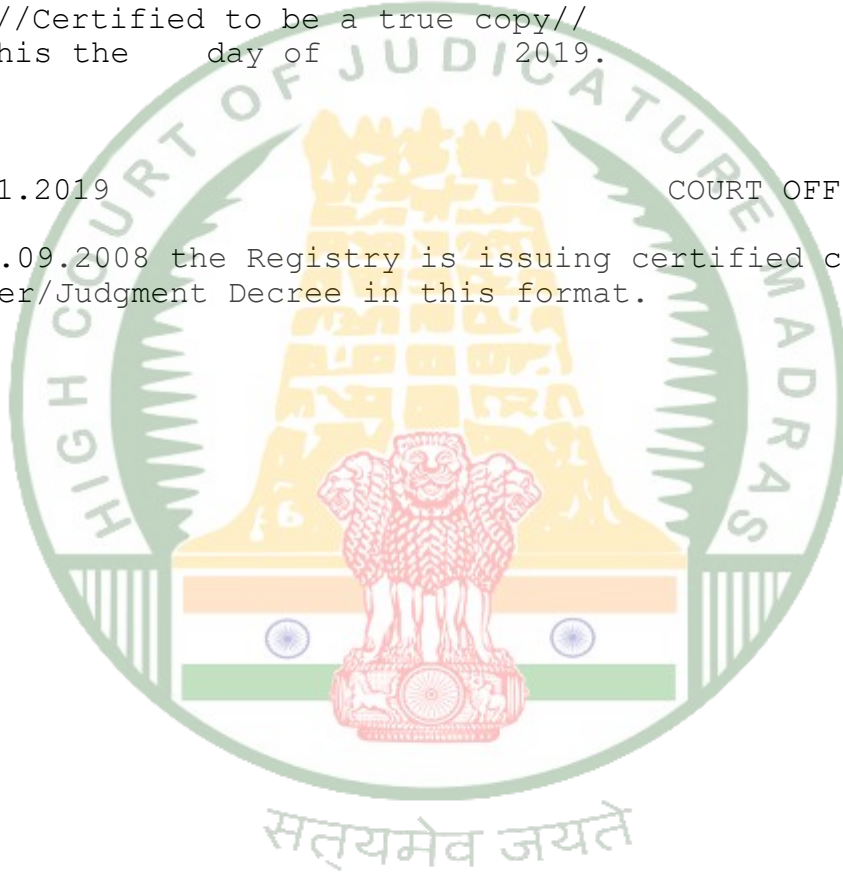
24.10.2019

//Certified to be a true copy//
Dated this the day of 2019.

SU/07.11.2019

COURT OFFICER

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



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