

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 10TH DAY OF DECEMBER 2019

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A. No.8657 of 2019
in
O.P.DIARY NO.45886 OF 2019

IN THE MATTER OF
ARBITRATION and
CONCILIATION ACT 1996

AND

IN THE MATTER OF DISPUTES
BETWEEN M/S.INDIAN OIL
CORPORATION LIMITED AND
M/S.N.R.P.PROJECTS PRIVATE
LIMITED, CHENNAI.

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

सत्यमेव जयते...APPLICANT/PETITIONER

-VS-

M/S. N.R.P.PROJECTS PRIVATE LIMITED,
REP.BY ITS PARTNER,
MR.HITESH J.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 29 days in filing the
O.P.D.No.45886/2019.

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

<https://hcservices.ecourts.gov.in/hcservices/>

Heard the Learned Counsel for the applicant and the

Learned Counsel for the respondent.

2. It is a case where the applicant has suffered an arbitration award, has preferred application under Section 34 of Arbitration and Conciliation Act, 1996, (hereinafter referred as "Act"), to set aside the said award, with delay.

3. According to the applicant, the arbitration award dated 22.10.2018 was subjected to correction of clerical error under Section 33 of the Act and the corrected award was issued on 04.12.2018. Under Section 34(3) of the Act, the application for setting aside the arbitration award ought to have been filed within a period of three months and it may entertain beyond three months within further period of 30 days, but not thereafter. Three months period stipulated under the Act expired on 04.03.2019. Whereas, the application for setting aside the arbitration award was presented in the Registry on 02.04.2019. Hence, there is a delay of 28 days. Since application filed within the further time prescribed under the statute, the learned Senior Counsel for applicant submit that delay has to be condoned.

4. The reason stated for the said delay is time taken to accord administrative sanction and for tracing out certain documents to file appeal. This application is stoutly opposed by the respondent on the ground that, mere

analogous expression will not *ipso facto* establishes sufficiency of the cause for condonation. Besides factual reason for the delay, within the general ambit of the said phrase must be established on the facts of the case and must be established to the satisfaction of the Court. Whereas, the applicant herein has only applied the expression of administrative sanction without, how and why the delay in administrative sanction caused. The learned Counsel appearing for the respondents would submit that, in the absence of a clear explanation for the delay, the application is bound to be dismissed.

5. The vexed question of condoning delay on the basis of sufficient cause has been considered by Courts in India time and again. Various guidelines and Principles has been laid down based on the facts of each case, but the often quoted judgment of the Hon'ble Supreme Court, is the case of **Collector, Land Acquisition, Anantnag Vs. Katiji** reported in **AIR 1987 SC 1353**, wherein, the following six factors has been laid down by the Hon'ble Supreme Court this stands as bed rock judgment for most of the cases arising from Section 5 of the Limitation Act or any application to condone the delay. Those six factors are extracted below:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to

legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

6. This Court is also abreast of the fact that, the earlier lenient view towards the public sector or Government Institution in condonation of delay has now been revisited and Courts have reconciled to the fact that, there cannot be two yardsticks one for a public litigant and another for the Government Sector. However, at the same time, one cannot lose sight of the fact that, by refusing to condone the delay in a litigation where the public sector or Government is the applicant, the ultimate sufferer will be the public. Therefore, it is the fact of this case must be taken note. Without causing undue prejudice to the contesting parties, the phrase sufficient cause to condone the delay has to be considered.

7. In this case, the Indian Oil Corporation, a public sector Company suffers an Arbitration award. As per the arbitration award, the applicant/Indian Oil Corporation has to pay a sum of Rs.4,23,47,903.63/- along with interest. This award is subject matter of the application which has been presented with the delay of 28 days.

Section 34(3) of the Arbitration and Conciliation Act, 1996, reads as below:-

"(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

8. Unlike, Section 5 of the Limitation Act, which gives unrestricted power to the Court to condone delay, Section 34(3) of the Arbitration and Conciliation Act prescribes time limit of three months and further period of 30 days but not thereafter. While the statute itself provides to condone the delay upto 30 days and an embargo not to entertain application thereafter, the phrase sufficient cause shown by the applicant has to be liberally consider. No doubt, not at the cost of the respondent.

9. In this case, within the upper time fixed, the applicant has preferred the application. It is brought to the notice of this Court that, the award amount has also been deposited in the Execution Court. In the light of the

above fact, if the delay is condoned, no serious prejudice will be caused to the respondent except to contest the application to set aside the arbitration award. Contrarily, if the delay is not condoned, the statutory right of preferring application to set aside the award will be short circuited and irreparable loss will cause to the applicant. Hence, this Court is of the view that this application is deserves to be allowed. Accordingly, the **Application is Allowed.**

10. Registry is directed to number the application if it is otherwise in order. Post the matter on 12.12.2019.

Sd/-DR.G.J.J.
10.12.2019

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

SU/11.12.2019

COURT OFFICER

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

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