

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL JURISDICTION)

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.7688, 7690, 8577 of 2019  
in  
O.P.DIARY NO.48809 of 2019

In the matter of Arbitration and Conciliation Act of 1996  
AND

In the matter of agreement for Joint Development  
Agreement dated 12.04.2013 between the petitioner and the  
respondent

And

In the matter of Arbitral Award dated 07.01.2019

**O.P.DIARY NO.48809 of 2019 and A.No.5397 of 2019:**

Mrs.K.KALAIARASI,  
No.22, Madura Kavi Street,  
Tambaram, Chennai-600 059 ..Applicant/Petitioner

-vs-

M/S. ZENITH BUILDERS P LTD.,  
REP.BY ITS MANAGING DIRECTOR,  
MR.V.PANDURANGAN, NO.80/5,  
T.M.MAISTRY STREET,  
THIRUVANMIYUR,  
CHENNAI-600 041 ..Respondent/Respondent

**A.No., 7688, 7690 of 2019:**

M/S. ZENITH BUILDERS P LTD.,  
REP.BY ITS MANAGING DIRECTOR,  
MR.V.PANDURANGAN, NO.80/5,  
T.M.MAISTRY STREET,  
THIRUVANMIYUR,  
CHENNAI-600 041 ..Applicant in all  
applicaitons

-vs-

Mrs.K.KALAIARASI,  
No.22, Madura Kavi Street,  
Tambaram, Chennai-600 059 ..Respondent in all  
applicaitons

**A.No.7688 of 2019:**

Application praying that this Hon'ble Court be  
pleased to grant an order of interim stay of all further

proceedings pursuant to the order dated 27.09.2019 passed by the Learned Master of this Hon'ble Court in A.No.5397/2019 in O.P.Diary No.48809 of 2019 pending disposal of the above application.

**A.No.7690 of 2019:**

Application praying that this Hon'ble Court be pleased to set aside the order passed by the Learned Master, passed in A.No.5397/2019 in O.P.D.No.48809 of 2019, dated 27.09.2019.

**A.No.8577 of 2019:**

Application praying that this Hon'ble Court be pleased to permit the applicant to raise additional grounds in Application No.7690/2019 detailed in Judges Summons.

**O.P.Diary.No.48809 of 2019:**

Original Petition (Diary No.48809 of 2019) praying that this Hon'ble Court be pleased to set aside the award dated 07.01.2019 passed by the learned Hon'ble Arbitrator TMT.JUSTICE ARUNA JAGADEESAN (RETIRED).

These applications and Original Petition (Diary No.48809 of 2019) coming on this day before this court for hearing the court made the following order:

These applications are filed for an interim stay of all further the proceedings pursuant to the order dated 27.09.2019 of the learned Master, to set aside the order passed by the learned Master and to permit the applicant to raise additional grounds in A.No.7690 of 2019.

2.I heard the learned counsel for the applicant and the learned counsel for the respondent.

3.The learned counsel for the applicant submitted that the arbitral award was pronounced on 07.01.2019 and

was received by the respondent on 12.01.2019. He further submitted that the petition under Section 34 of the Conciliation Act, 1996 (the Arbitration Act) was filed on 08.04.2019. Thereafter, the said petition was returned by the Registry of this Court on 27.05.2019 and was re-presented on 25.07.2019. The respondent has taken about 146 days to cure the defects and file a proper petition. Consequently, he submits that the prescribed time limit under Section 34(3) of the Arbitration Act, namely 3 months + 30 days was exceeded.

4. In support of his submissions, the learned counsel for the applicant relied upon the following judgments:

**"1) Delhi Transco Ltd. and Another -vs- Hythro Engineers Pvt. Ltd., MANU/DE/3198/2012,** wherein a Division Bench of the Delhi High Court dismissed an appeal against an order refusing to condone the delay of 72 days in re-filing. In the said Judgment, the Division Bench held that the Arbitration Act prescribes a time limit and, therefore, if the application for condoning delay in re-filing is filed after the prescribed period of 3 months + 30 days, the matter requires strict scrutiny and that a lenient approach should not be adopted.

**2) INX News Pvt. Ltd., -vs- Pier One Construction Pvt. Ltd., in MANU/DE/4292/2013,** wherein a single Judge of the Delhi High Court rejected an application to condone the delay of 157 days in re-presentation on the ground that the delay was not properly explained and that sufficient cause was not made out to condone such delay while recognizing that the Court is not emasculated of its power to condone the delay.

**3) M/s. Gautam Associates -vs- Food**

**Corporation of India on 29th July 2009 in O.M.P.No.190 of 2003 dated 29th July 2009,** wherein a single Judge of the Delhi High Court dismissed an application to condone the delay in re-filing the petition under Section 34 of the Arbitration Act by adverting to the relevant rules and concluding that the earlier practice of adopting a lenient approach in such matters has changed and that a strict approach is required in the context of the Arbitration Act.

5.By relying upon the said judgments, the learned counsel for the applicant contended that the delay is not liable to be condoned in this case. In this connection, he referred to the affidavit filed by the respondent in support of the application to condone the delay in representation and in particular, to paragraphs 3 and 4 thereof, wherein it is stated that the case bundle was misplaced and that it could not be recovered within time in spite of bona fide efforts.

6.He, thereafter, referred to the counter affidavit filed in this regard, wherein, in paragraphs 7 and 10, the applicant had pointed out that the affidavit in support of the application to condone the delay does not contain particulars with regard to the date when the Registry returned the papers, who the Advocate Clerk was etc. Therefore, he contended that the present application to set aside the order of the learned Master

is liable to be allowed.

7. In response, the learned counsel for the respondent submitted that the judgments that were relied upon by the learned counsel for the applicant are in the context of the Delhi High Court Original Side Rules 2018, which prescribe in Rule 3 that defects in filing should be rectified within a period not exceeding 7 days at a time and within 30 days in the aggregate.

8. By Contrast, he submitted that the Original Side Rules of this Court do not contain such an overall limit of 30 days. Therefore, he submitted that the judgments that were relied upon by the learned counsel for the applicant are not apposite in the context of a petition before this Court.

9. The records were examined and the oral submissions of both the learned counsel were considered. From the judgments that were referred to and relied upon by the learned counsel for the applicant, even in the context of the applicable rules in the Delhi High Court, it is clear that the period of limitation that is prescribed in Section 34(3) of the Arbitration Act is not applicable to applications to condone delay in re-presentation. After pointing out that the Court has the power to condone delay in re-presentation, the Court has taken note of the fact that an application to condone delay in re-presentation, if filed in respect of delay that exceeds the stipulated period of 3 months + 30 days should be

examined more strictly than in other context.

10.Keeping in mind the above legal position, in this case, the petition was re-presented within a total of about 60 days from the date of return. An Advocate's affidavit has been filed in support of the application to condone delay and I see no reason to reject the averments contained therein or to set aside the impugned order of the learned Master, wherein he relied upon the said averments and allowed the application subject to payment of costs.

11.For the aforesaid reasons, these applications are dismissed. The Registry is directed to put up these papers before the learned Master for appropriate orders. Thereafter, the Registry is directed to number O.P.D.No.48809 of 2019, if it is otherwise in order.

Sd/.S.K.R.J.  
20.11.2019

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

Su.28.11.2019

COURT OFFICER

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