

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.09.2020
Pronounced On	14.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.P.No.10088 of 2020
in
O.S.A.Sr.No.53827 of 2020
and
O.S.A.Sr.No.53827 of 2020
(Through Video Conferencing)

K.I. (INTERNATIONAL) LIMITED,
A Company incorporated under the
Companies Act, 1956,
Having its Registered Office at No.664,
T.H.Road, Tondiarpet, Chennai - 600 081.

... Petitioner/appellant
sought to prefer this
O.S.A.Sr.53827 of 2020
in this Court

Vs.

LSS OCEAN TRANSPORT DMCC,
Rep. by its Authorised Signatory,
A Company incorporated under the
appropriate Laws of the United Arab Emirates,
Having its Registered Office at Unit No.2708,
Jumeirah Business Centre 5-Cluster W - Dubai,
United Arab Emirates.

...Respondent/respondent
sought to prefer this
O.S.A.Sr.53827 of 2020
in this Court

Prayer in C.M.P.No.10088 of 2020:- Civil Miscellaneous Petition
filed under Order XIV Rule VIII of O.S.Rules, to condone the
delay of 141 days in filing the Original Side Appeal in
O.S.A.Sr.No.53827 of 2020.

Prayer in O.S.A.Sr.No.53827 of 2020:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules of High Court, Madras, to set aside the order dated 04.10.2019 passed in A.No.6092 of 2019 on the file of Original Side of High Court at Madras.

For petitioner/appellant : Mr.C.P.Sivamohan

For respondent/respondent: Mr.Amitava Majumdar, S.C.
for M/s.Deepika Murali.

O R D E R

C.SARAVANAN, J.

Heard the learned counsel for the petitioner and the learned senior counsel for the respondent.

2. By this petition, the petitioner has prayed for condoning a delay of 141 days in filing the above appeal. The petitioner was the respondent in A.No.6092 of 2019. The said application was filed by the respondent herein under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned Single Judge for appointment of a Receiver and to direct the sale of the 2500 MT of Cargo currently under the possession of the applicants and have the sale proceeds deposited with the Registry of this Court pending the disposal of the London arbitration proceedings arising out of Charterparty dated 22.11.2018 as amended by Annexure dated 24.12.2018 and Agreements dated 13.03.2019 and 12.04.2019.

3. By the impugned order dated 04.10.2019, the Learned Single Judge had allowed the said application by appointing joint receivers to be appointed by the petitioner and the respondent to sell the imported coal over which the respondent exercised lien. Aggrieved by the impugned order dated 04.10.2019, petitioner has filed the present appeal for setting aside the same with the delay of 141 days.

4. In the affidavit filed in support of this petition for condoning the delay, the petitioner has stated that the certified copy of the impugned order passed by the learned Single Judge in A.No.6092 of 2019 on 04.10.2019 was made ready on 19.11.2019.

5. It has been further stated that though the order was made ready on 19.11.2019, the petitioner could not collect the same and during the interregnum, A.No.231 of 2020 was filed by the respondent and an order came to be passed in the said

application. It has been further averred in the affidavit that the petitioner was advised to file appeal only against the impugned order dated 04.10.2019 passed by the learned Single Judge in A.No.6092 of 2019 not against the order passed in A.No.231 of 2020 as latter order was merely a miscellaneous order to the impugned order dated 04.10.2019 of the learned Single Judge in A.No.6092 of 2019.

6. It has been further averred that before the present appeal could be filed, lockdown was imposed on 24.03.2020 and hence the present appeal was filed with a delay of 141 days on 24.08.2020.

7. The respondent on the other hand has filed a detailed counter and prayed for dismissal of this petition filed for condoning the delay of 141 days in filing the appeal.

8. The learned counsel for the respondent drew our attention to the decisions of the Hon'ble Supreme Court in Balwant Singh Vs. Jagdish Singh and others, (2010) 8 SCC 685 and in Basawaraj and Another Vs. Special Land Acquisition Officer, (2013) 14 SCC 81.

9. After hearing this case on 17.09.2020, we had reserved the case for passing orders. However, a there was a request for listing the case under the caption "for clarification" at the behest of the learned counsel for the respondent. Therefore, this case was listed again on 22.09.2020 under the caption "for clarification".

10. The learned counsel for the respondent submitted that under similar circumstances, the Hon'ble Supreme Court had declined to condone the delay in its latest order dated 18.09.2020 in Civil Appeal Nos.3007 and 3008 of 2020 in Sagufa Ahmed and Others Vs. Upper Assam Plywood Products Ltd. and Others.

11. Distinguishing the said order, the learned counsel for the petitioner submits that all the three decisions cited by the learned counsel for the respondent cannot be applied to the facts and circumstances of this case.

12. He further submitted that the latest decision of the Hon'ble Supreme Court dated 18.09.2020 was rendered in the context of an order passed by the National Company Law Tribunal (NCLT) and that the appeal against the said order had to be filed not beyond the limitation statutory prescribed under the provisions of the Companies Act, 2013 before National Company Law Appellate Tribunal.

13. It was further submitted that the appeal before the National Company Law Appellate Tribunal (NCLAT) cannot be admitted if it was filed beyond 45 days prescribed for condoning the delay and therefore NCLAT had dismissed the appeal and against the said order of the NCLAT, Civil Appeal Nos.3007 and 3008 of 2020 were filed.

14. We have given our consideration to the submissions of the learned counsel for the petitioner and the learned senior counsel for the respondent.

15. The respondent had filed A.No.6092 of 2019 for appointment of a Receiver and for a direction for sale of 2500 Metric Tons of imported coal on which it exercised a lien and to have the sale proceeds deposited to the credit of the aforesaid application. The petitioner as a respondent in the said application contested the said application.

16. The impugned order came to be passed on 04.10.2019 in O.A.No.6092 of 2019. Certified copy of the impugned order was made ready on 19.11.2019. The petitioner however failed to comply with the same by appointing its nominee as a Joint Receiver.

17. Under these circumstances, the respondent filed A.No.231 of 2020 for appointment of an Advocate Commissioner to undertake the same exercise to sell the imported coal since it was a perishable commodity lying in open space and prone to deterioration and would diminish in its value.

18. The learned Single Judge has thereafter passed an order in A.No.231 of 2020 on 04.03.2020 by appointing an Advocate Commissioner to carry on the same activity which was originally ordered to be undertaken by Joint Receivers to be appointed by the petitioner and respondent. Thus, the impugned order dated 04.10.2019 stood substituted by another order dated 04.03.2020 in A.No.231 of 2020. It is therefore open for the petitioner to challenge the same in the manner known to law as no useful purpose will be served by challenging the impugned order dated 04.10.2019.

19. Instead, the petitioner has filed present petition on 24.08.2020 long after the limitation expired. Though lockdown was imposed on 24.03.2020 and therefore the petitioner could not file the present appeal earlier along with the petition for condoning the delay, we find that the petitioner has not properly explained the reasons for the delay in its affidavit. Further, with the passing of order in A.No.231 of 2020, the impugned order is no longer having any force. We therefore do

not find any reasons for condoning the delay in filing the above appeal.

20. Though the decision of the Hon'ble Supreme Court in Civil Appeal Nos.3007 and 3008 of 2020 was cited, we are of the view that the said decision is of no relevance to the facts of the present case. There the appellants did not file any appeal on or before 18.03.2020 before the National Company Law Appellate Tribunal (NCLAT) but instead of filed the appeal on 20.07.2020 long after the lockdown was imposed on 24.03.2020. The Hon'ble Supreme Court took note of its order in Suo Motu order dated 23.03.2020, wherein, it was observed as under:-

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

21. Therefore, the Hon'ble Supreme Court ultimately held as follows:-

19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

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25. Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23.03.2020, for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.

22. Therefore, the said decision of the Hon'ble Supreme Court cannot be made applicable to the facts of this case as it was rendered in the context of provisions of Companies Act, 2013, where period which can be condoned was statutorily circumscribed.

23. Whereas, in the present case, only Section 5 of the Limitation Act is applicable. For getting the delay condoned, a litigant has to not only properly explain the delay but also should make out a case for sufficient cause for condoning the delay. In this case, the petitioner has not properly explained the delay. Further, the impugned order has been substituted by another order dated 04.03.2020 in A.No.231 of 2020.

24. Under these circumstances, we do not find any merits in the present petition. We are therefore inclined to dismiss this petition filed by the petitioner for condoning the delay of 141 days for want of sufficient cause.

25. Accordingly, this Civil Miscellaneous Petition filed by the petitioner is dismissed. In the result, O.S.A.Sr.53827 of 2020 is rejected. No cost.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to M/s.Deepila Murali, Advocate Sr.34024

C.M.P.No.10088 of 2020
in
O.S.A.Sr.No.53827 of 2020
and
O.S.A.Sr.No.53827 of 2020

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srg 02/12/2020

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