

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 29TH DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.7888 of 2019

in

O.P. No.381 of 2017

In the matter of Arbitration
and Conciliation Act, 1996
(Act XXVI of 1996) between
Mrs.Karpagam and
Mr.G.R.K.Reddy, Chairman and
M.D. of New Chennai Township
Private Limited
In the matter of Agreement
dated 02.05.2012.

Mrs.Karpagam,
W/o.late M.R.Ganesan,
No.37, Lakshmi Castle,
T 1, 3rd Floor, Chari Street,
T.Nagar, Chennai-600 017. .. Applicant/Petitioner

-Versus-

Mr.G.R.K.Reddy,
Chairman & M.D.,
New Chennai Township Private Limited,
Regd. Off: 'MARG AXIS', 4/318,
Rajiv Gandhi Salai,
Kottivakkam, Chennai-600 041.

Corp. Off: 'FUTURA TECH PARK',
No.334, Rajiv Gandhi Salai,
Sholinganallur, Chennai-600 119. ..Respondent/Respondent

Application praying that this Hon'ble Court be pleased
to condone the delay of 62 days in filing the application
for restoration of the O.P.No.381 of 2017, which was
dismissed for default on 28.01.2019.

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

This matter has a long and chequered history. 'Original Petition' ('OP' for the sake of brevity) was presented in this Court on 25.04.2017 with a prayer for appointment of an Arbitrator (obviously under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity).

2. Notice was issued and the respondent entered appearance through counsel. Thereafter, as there was no representation in the matter on behalf of the petitioner for as many as three hearings, Hon'ble predecessor Judge directed the matter to be listed under the caption 'FOR DISMISSAL'. This was vide proceedings dated 12.01.2018. When the matter was listed under the caption 'FOR DISMISSAL' on 17.01.2018, the position was no different and OP was dismissed for default by Hon'ble predecessor Judge.

3. Thereafter, the petitioner took out an application in A.No.9974 of 2018 with a prayer to restore OP (though prayer is couched in a language seeking to set aside order of dismissal). In this restoration application (which shall hereinafter be referred to as 'first restoration application' for the sake of convenience and clarity), notice was ordered and learned counsel entered appearance again for the respondent. This restoration application (though styled as a set aside application as mentioned

earlier) was also not prosecuted diligently and therefore, another Hon'ble predecessor Judge dismissed the restoration application for default vide order dated 28.01.2019.

4. In the aforesaid backdrop, instant application i.e., A.No.7888 of 2019 has been filed with a prayer to condone delay in filing a second restoration application to restore the first restoration application which was dismissed for default on 28.01.2019. In this second restoration application, again notice was ordered and respondent once again has entered appearance through learned counsel. This second restoration application also has not been diligently prosecuted. In other words, this second restoration application also has followed the beaten track of the main OP and the first restoration application.

5. Read this in conjunction with and in continuation of earlier proceedings of this Court dated 28.01.2020 i.e., proceedings made yesterday in instant application i.e., second restoration application, which reads as follows:

'Dr.S.Padma, learned counsel for respondent is before this Court and learned counsel is ready, but there is no representation for the petitioner.

List under the caption 'FOR DISMISSAL' on 29.01.2020.'

6. Pursuant to the aforesaid proceedings, instant application is listed under the caption 'FOR DISMISSAL' today. The position is no different today. In other words, Dr.S.Padma, learned counsel for respondent is before this Court and is ready to make submissions, but there is no representation for the applicant.

7. The aforesaid trajectory brings to light that the applicant in instant application, who is petitioner in the main OP, has been completely recalcitrant in pursuing the matter.

8. To be noted, main OP itself one under Section 11 of A and C Act as alluded to supra.

Therefore, this Court deems it appropriate to dismiss the instant application for default / non-prosecution but with costs of Rs.50,000/- (Rupees Fifty Thousand only).

Sd./-M.S.J
29.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 03/02/2020

COURT OFFICER(O.S.)

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