

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2020

Delivered on : 01.10.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

A.No.9150 of 2019

in

O.P(D).No.128930 of 2019

(Filing No.)

&

O.P(D).No.128930 of 2019

(Filing No.)

1. The General Manager
Southern Railway
Head Quarters Office
Park Town
Chennai – 600 003

2. The Chief Engineer/Central
(Construction)
Southern Railway
Periyar E.V.R.High Road
Egmore
Chennai – 600 008

...Applicants/petitioners

Vs.

Eagle-Omega and KR and Co. (JV)
Represented by its Lead Partner Mr.C.Karnan
No.46, Co-Operative Society

Parks Arch Road
Uppilipalayam
Coimbatore – 641 015

... Respondent/Respondent

Application filed under Order XIV Rule 8 of O.S.Rules read with Section 34 of the Arbitration and Conciliation Act, 1996 to condone the delay of 30 days in filing the petition to set aside the award dated 10.6.2019.

For Applicants : Mr.P.T.Ramkumar
Standing Counsel for Southern Railways

For Respondent : Mr.R.Murari
Senior Counsel
for Mr.K.K.Murralitharan

ORDER

Aforementioned 'Original Petition' i.e., O.P(D).No.128930 of 2019 (Filing Number), shall hereinafter be referred to as 'said OP' for the sake of convenience and clarity.

2.Aforementioned said OP has been filed assailing an 'arbitral award dated 10.06.2019' (hereinafter 'impugned award' for the sake of brevity) made by an 'Arbitral Tribunal' ('AT' for the sake of brevity) constituted by a sole Arbitrator and it is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

3.Aforementioned said OP has been presented in this Court on 14.10.2019 with the captioned application i.e., A.No.9150 of 2019 with a prayer to condone, what according to the applicants, is 30 days delay in filing said OP.

4. In this order, from hereon 'Applicants' shall be collectively referred to as 'Southern Railways' and 'sole respondent' shall be referred to as 'Contractor', for the sake of convenience and clarity.

5. This Court is informed without any disputation or disagreement that there is an 'agreement dated 08.10.2009' (hereinafter 'said contract' for the sake of brevity) between Southern Railways and Contractor for gauge conversion work in Mayliaduthurai-Thiruvapur-Karaikudi sector and some construction between Mayliaduthurai-Thiruvapur Railway Stations.

6.Owing to the nature and limited scope of the captioned application which this Court is now concerned with, suffice to say that there is a arbitration clause in the said contract, arbitral disputes *inter*

alia touching upon reduction of vitiation amounts from running bills, price variation clause etc., erupted between Southern Railways and Contractor, AT was constituted, AT made the impugned award after full contest, Southern Railways has chosen to lay challenge to the impugned award vide OP on hand and it is not necessary to dilate further on facts.

7. To be noted, applications under Section 34 of A and C Act challenging arbitral awards are given the nomenclature 'Original Petition' in this Court. As already mentioned supra, said OP was presented in this Court on 14.10.2019 by the Southern Railways with the captioned application i.e., Application No.9150 of 2019 with a prayer to condone, what according to Southern Railways is 30 days delay in filing said OP. Captioned application is resisted by the contractor primarily on the ground that delay sought to be condoned cannot be construed as 30 days, it is more than 30 days and therefore it is not condonable owing to the rigour of proviso to sub-section (3) of Section 34 of the A and C Act. This is the crux and gravamen of the disputation/contest in captioned application.

8. In the light of the controversy in the captioned application, this Court deems it appropriate to give relevant undisputed dates by way of a tabulation and the same is as follows:

Sl.No.	Event	Date/s
1	Impugned award made	10.06.2019
2	Impugned award received by Southern Railways	13.06.2019
3	'Prescribed period' of three months vide sub-section (3) of Section 34 of A and C Act is to be reckoned from (excluding date of receipt of impugned award)	14.06.2019
4	Madras High Court closed for Dussehra vacation	05.10.2019 to 13.10.2019 (Both dates inclusive)
5	said OP assailing impugned award presented in this Court on	14.10.2019

9. Before proceeding further, it is necessary to mention that in the counter affidavit filed by the contractor, it has *inter alia* been contended that three months prescribed period under sub-section (3) of Section 34 should be computed from the date of receipt of the award i.e., 13.06.2019, but on this Court pointing out that in **Himachal Techno**

Engineers case [*Himachal Pradesh and Another Vs. Himachal Techno Engineers and another* reported in (2010) 12 SCC 210] Hon'ble Supreme Court has laid down the principle that the date of receipt of award has to be excluded, learned Senior Counsel for Contractor fairly stated that date of receipt of the impugned award should be excluded for computing three months. This is mentioned only for making it clear that 14.06.2019 (reckoning date for computing three months) has also been included in the undisputed dates (tabulation supra) because of this reason. This Court is clear that the date of receipt of the impugned award should be excluded is the **Himachal Techno Engineers** principle.

10. This Court, having set out essential facts that are imperative for appreciating this order by way of factual matrix in a nutshell and undisputed dates, now proceeds to capture and to set out rival submissions.

11. Learned Standing Counsel for Southern Railways made submissions in support of prayer in captioned application for condonation of delay and a summation of his submissions is as follows:

- a) Relying heavily on the expression 'prevented by sufficient cause' occurring in proviso to Section 34(3) of A

and C Act, it was submitted that this Court was closed for Dussehra vacation, therefore Southern Railways was prevented from presenting said OP on 13.10.2019;

b) As Southern Railways was prevented from presenting said OP upto 13.10.2019 (on and from 05.10.2019), presentation on the next working day i.e., 14.10.2019 is in order and the delay is condonable;

c) Section 10 of the 'General Clauses Act, 1897' (hereinafter 'GC Act' for the sake of brevity) reads/says that when the Court or Office is closed on a given day, any act or proceeding shall be considered to have been done or taken in due time if done or taken on the next day on which the Court or Office is open;

d) Matter was placed before General Manager of Southern Railways who scrutinized the same and took a decision to challenge the impugned award. Therefore, the delay needs to be condoned.

No case law was pressed into service by learned Standing Counsel for Southern Railways.

12. Learned Senior Counsel, leading the counsel on record for Contractor, made contra submissions, summation of which is as follows:

a) Court being closed on the last day plea predicated on Section 10 of GC Act will apply only for 'prescribed period' and not for 'further period' i.e., condonable period of 30 days. Reliance was placed on Section 2(j) of 'Limitation Act, 1963' (hereinafter 'Limitation Act' for the sake of brevity) and Section 4 of Limitation Act in this regard.

b) Even one day beyond the cap of 30 days vide proviso to sub-section (3) of Section 34 of the A and C Act cannot be condoned owing to the language in which proviso is couched particularly the expression 'but not thereafter' occurring in the proviso.

c) Following case laws were placed before this Court:

(i) ***Simplex Infrastructure Limited Vs. Union of India*** reported in (2019) 2 SCC 455;

(ii) ***Rajnish Gupta & Another Vs. Brij Mohan Agarwal*** reported in (2019) SCC Online 11635;

(iii) *Anilkumar Jinabhai Patel (dead)*
through legal representatives Vs. Pravinchandra
Jinabhai Patel & Others reported in (2018) 15
SCC 178;

(iv) *P.Radha Bai and Others Vs. P.Ashok*
Kumar and another reported in 2018 SCC Online
SC 1670;

(v) *Assam Urban Water Supply an*
Sewerage Board Vs. Subash Projects &
Marketing Ltd., reported in (2012) 2 SCC 634;

(vi) *Union of India Vs. Popular*
Construction Company, reported in (2001) 8 SCC
470;

(vii) *Eagle MPCC (JV) Vs. The Union of*
India and Others reported in
MANU/KA/1044/2019;

(viii) *State of Himachal Pradesh & Anr. Vs.*
M/s.Himachal Techno Engineers & Anr. Reported
in (2010) 12 SCC 210;

(ix) **Obulapuram Mining Company Pvt. Ltd., Vs. JSW Steel Limited** reported in **MANU/MH/0551/2019**;

(x) Order of Hon'ble Supreme Court dated 18.09.2020 in Civil Appeal No.003007-003008 of 2020 in **Sagufa Ahmed and others Vs. Upper Assam Plywood Products Pvt. Ltd.**, case.

13. **Popular Construction Limited** case reported in (2001) 8 SCC 470 and **Simplex Infrastructure** case reported in (2019) 2 SCC 455 were pressed into service to emphasis that the expression 'but not thereafter' occurring in proviso to sub-section (3) of Section 34 is all too important and Hon'ble Supreme Court has held that this expression would become otiose if any delay beyond 30 days is condoned.

14. **Anil Kumar Jinha Bai** case reported in (2018) 15 SCC 178 and **Assam Urban Water Supply** case reported in (2012) 2 SCC 624 were pressed into service to buttress the argument that the benefit of exclusion of period during which Court is closed is available only for prescribed period of limitation i.e., three months under sub-section (3) of

Section 34 and not to 30 days (vide proviso) beyond 3 months, which is the condonable period and which is in the nature of a cap qua condonable period. **P.Radha Bai** case reported in **2018 SCC online SC 1670** was relied on to say that Section 5 of Limitation Act is not applicable to applications under Section 34 of A and C Act owing to Section 29(2) of Limitation Act. To be noted, there is a reference to 'but not thereafter' expression in the proviso in this case law also as in **Popular Construction** case and **Simplex Infrastructure** Case. **Eagle MPCC (JV)** case penned by a Hon'ble single Judge of the Karnataka High Court was placed before this Court to say that a case where the 30th day fell on a Sunday, presentation made on the next working day was held to be not good enough/not condonable under proviso to Section 34(3) of the A and C Act *inter alia* owing to Section 2(j) of Limitation Act. To be noted, it was submitted that for all practical purposes the applicant therein is the same Contractor, but the description of name is different as it was another JV. This Court is informed that 'JV' stands for 'Joint Venture'. This Court was also informed that there was an intra-court appeal and a Hon'ble Division Bench of the Karnataka High Court vide order dated 12.07.2018 dismissed the appeal as not maintainable. It was further

submitted that the matter was not carried any further by South-Eastern Railways and the award amount was paid out.

15. **Obulapuram Mining Company Pvt. Ltd.**, case penned by a Hon'ble single Judge of Bombay High Court was placed before this Court for the point that GC Act cannot be pressed into service besides the principle that Court being closed plea is available only for prescribed periods of limitation and not for the further condonable periods. This Court is informed that there is no further appeal against this single Judge order and therefore it is to be construed to have become final. As already delineated supra, this Court brought to the notice of the parties **Himachal Techno Engineers** case law for saying that the date of the award has to be excluded for computing three months. Thereafter, this case law was relied on by the Contractor to say that the presentation in the instant case was not within 30 days.

16. By way of reply, submissions made by learned Standing Counsel for Southern Railways given as a summation is as follows:

- a) There can be no dispute regarding **Popular Construction** case and **Simplex Infrastructure** case for the principle that delay beyond 30 days is not condonable, but

other case laws with the exception of *Assam Urban Water Supply* case law are not of relevance as they pertain to larger periods of delay;

b) *Assam Urban Water Supply* case was sought to be distinguished by saying that it is a case where recourse was taken to Section 4 of Limitation Act, whereas that is not so in the case on hand. *Sagufa Ahmed* case was sought to be distinguished by saying that it was a case pertaining to a *suo motu* order passed by Hon'ble Supreme Court pursuant to lockdown and interpretation of the *suo motu* order.

17. This Court, having set out the rival submissions, now proceeds to discuss the same and give its dispositive reasoning for arriving at a conclusion.

18. At the out set qua discussion and dispositive reasoning, this Court deems it appropriate to set out two aspects of the matter with specificity. First aspect is, this Court would proceed with the discussion and dispositive reasoning without touching upon orders of Hon'ble single Judges of Karnataka High Court and Bombay High Court. The reason is, the proposition or point for which they were placed before this Court i.e.,

Court being closed on the last day is applicable only to prescribed period of limitation (not to further periods of limitation), GC Act does not come to the aid of next working day argument, rigour of proviso to Section 34(3) is non-derogable etc., are propositions/points on which Hon'ble Supreme Court case laws are instructive / elucidative and therefore this Court would go by the principles laid down by Hon'ble Supreme Court which are precedents rather than touching upon orders which are of persuasive value. To be noted, Hon'ble Supreme Court case laws which were placed before this Court by learned Senior Counsel for contractor adumbration of which has been set out supra in the rival submissions lay down these principles and therefore, this Court has chosen to adopt this course.

19. This Court has also taken note of the fact with regard to order of Hon'ble Single Judge of Karnataka High Court carried in appeal by way of an intra-court appeal was dismissed on the ground of maintainability without going into the merits of the matter.

20. The second aspect of the matter is, of the remaining case laws placed before this Court, strong reliance was placed on *Assam Urban Water Supply*, *Simplex Infrastructure*, *Popular Construction*, and

Himachal Techno Engineers case laws . In other words, these were case laws which were pressed into service in every sense of the matter.

21. This Court has no hesitation in accepting the argument that the expression 'but not thereafter' occurring in proviso to Section 34(3) of the A and C Act is non-derogable. To put it differently, this Court has no hesitation in holding that delay of even one day beyond 30 days cannot be condoned *inter alia* owing to the rigour of the language in which the proviso to Section 34(3) of the A and C Act is couched. **Simplex Infrastructure** principle and **Popular Construction** principle laid down by Hon'ble Supreme Court are elucidative and instructive in this regard. This principle is now indisputable, in any event, there was no contest on this point and therefore this Court deems it appropriate to not to burden this order with elaboration by dilating further on this by extracting and reproducing relevant paragraphs from **Simple Infrastructure** and **Popular Construction** case laws.

22. This takes us to the next point. There can be no disputation or disagreement with the principle that statutory expression of time periods can be in different units, namely months or days. In the case on hand with regard to sub-section (3) of Section 34 of the A and C Act, the

statute has chosen to use the unit 'months' in sub-section (3) and the unit 'days' in the proviso. Therefore, three months is the prescribed period of limitation and 30 days is the further condonable period thereafter. 30 days (post three months) is also a cap beyond which there can be no condonation. Significant point is three months cannot be read as 90 days. This is because, a month may or may not be made up of 30 days. A month can be 28 days, 29 days, 30 days or 31 days depending on the month/s and the year i.e., as to whether it is a leap year or not, if one of the months we are concerned with is 'February'. In effect, three months occurring in sub-section (3) which is the prescribed period of limitation has to be reckoned in a particular manner and 30 days occurring in the proviso being further condonable period (post three months) has to be reckoned in another manner as the units are different. As there is no contest about this distinction between the two units i.e., months and dates, this Court deems it appropriate to not to burden this order with extracts and reproductions lest this order becomes verbose. To be noted, there will be some delineation and discussion regarding method of computation qua 'months' infra.

23. Undisputed dates and events have already been set out supra in this order in the form of a tabulation. For the purpose of discussion on computation aspect, it is to be noted that in **Himachal Techno Engineers** case, Hon'ble Supreme Court addressed itself to the question as to whether the three months could be counted as 90 days. This has been formulated as Question (ii) in Paragraph 6. The answer to this question is set out in Paragraphs 14 to 18 of **Himachal Techno Engineers** case and the same reads as follows:

'14. The High Court has held that "three months" mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.

15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to

the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as “three months” and “one month” respectively or by describing the periods as “ninety days” and “thirty days” respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a “month” as meaning a month reckoned according to the British calendar.

17. In Dodds v. Walker [(1981) 1 WLR 1027 : (1981) 2 All ER 609 (HL)] the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar [(2001) 7 SCC 197] .

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days. '

24. A perusal of aforesaid illustrative paragraphs in the order of Hon'ble Supreme Court brings to light that reliance has been placed on an earlier case law, namely **Bibi Salma Khatoon** case. This Court, therefore, took it upon itself to respectfully look up Bibi Salma Khatoon's case. In Bibi Salma Khatoon case, three months from the date of registration of document under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (12 of 1962) fell for consideration and the question was, whether an application filed under Section 16(3) of this Act on 30.04.1988 was within time (three months) qua a registered sale deed dated 30.01.1998 and Hon'ble Supreme Court answered the same in Paragraph 8 of the said case law. Relevant portion of paragraph 8 of said case law reads as follows:

'8.....Therefore, the date from which the limitation commences has to be excluded in computing the period of limitation of three months. In Halsbury's Laws of England, 4th Edn., para 211 [Ed.: See in the first issue of 4th Edition in Vol. 45, para 1111] method of computation of month is given as follows:

“211. Calendar month running from arbitrary date.—When the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more

days than the next succeeding month, the period expires at the end of that succeeding month.

If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or is not a leap year."

Thus computed, the application filed by the appellant on 30-4-1988 is within limitation — a period of three months of the date of the registered sale deed dated 30-1-1988. In this view of the matter, we are unable to sustain the order under challenge. We set aside the impugned order, restore the second appeal and remit the case to the High Court for disposal in accordance with law.'

25. To be noted, in **Himachal Techno Engineers** case Hon'ble Supreme placed reliance on a English Case law also namely **Dodds Vs. Walker** reported in **(1981) 2 All ER 609 (HL)** wherein the House of Lords had held that in calculating whether specified number of months had elapsed after the occurrence of a specified event the rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than the others. Therefore, the term used is corresponding date. It is also be noted that the term used in sub-section (3) is 'elapsed'. It was held that Bibi Salma Khatoon Case is to the same effect as **Jodds Vs. Walker** principle. Be that as it may, in **Himachal Techno Engineers** case, the date of receipt

of the award was 12.11.2007, after excluding 12.11.2007, 3 months was calculated from 13.11.2007 and it was held to expire on 12.02.2008. In ***Assam Urban Water Supply*** case, Paragraph 10 is of relevance qua computation and the same reads as follows:

'10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26-6-2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26.11.2003. The District Court had Christmas vacation for the period from 25.12.2003 to 1-1-2004. On reopening of the court i.e., on 2-1-2004, admittedly the applicants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of the period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.'

26. A perusal of Paragraph 10 of ***Assam Urban Water Supply*** case reveals that it does not say that date of receipt of award has not been excluded.

27. In instant case on hand, that the three months period has to be

computed from 14.06.2019 by excluding the date of receipt of award is not in dispute. If one goes by the computation in *Himachal Techno Engineers* case, 3 months would expire on 13.09.2019 whereas *Bibi Salma Khatoon* principle suggests that it may be possible to construe that it elapsed on 14.09.2019. However, it may not be necessary to enter into this arena in this case. This aspect is left open in this case for two reasons. First reason is, matter was argued by both sides by taking 13.09.2019 as the relevant date in this regard. Second reason is there is no sufficient cause for condonation of delay in the case on hand. In other words, the delay cannot be condoned even if sufficient cause is shown (post 30 days) aspect does not arise in this case. This will come to light from the discussion in this regard infra.

28. This Court therefore embarked upon the exercise of examining if sufficient cause qua delay condonation plea has been made out. Before this Court does that, it is made clear that the contention of learned Standing Counsel for Southern Railways that *Assam Urban Water Supply* case is distinguishable on facts as no recourse to Section 4 of Limitation Act has been taken cannot be sustained as *Assam Urban Water Supply* case is an authority for the proposition that the last day on

which the prescribed period ends being a Court holiday would apply only to prescribed period of limitation and not to further condonable periods post prescribed period of limitation. In instant application, it is not the case of Southern Railways that the last day of the prescribed period of three months fell on a Court holiday. The case of Southern Railways is that the last day of the further period i.e., condonable period post period of limitation, namely the 30th day fell on a Court holiday. Facts of **Assam Urban Water Supply** case as contained in Paragraph 10 of that case law has already been extracted and reproduced supra. This prescribed period principle is elucidated and articulated in Paragraphs 12 to 14 of that case law which read as follows:

'12. Section 4 of the 1963 Act reads as follows:

4.Expiry of prescribed period when court is closed.—

Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens

where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

2(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.’

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purpose of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend no sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.’

29. Similarly, the argument of learned Standing Counsel for Southern Railways that ***Sagufa Ahmed*** case is distinguishable as it centres around *suo motu* orders passed by Hon'ble Supreme Court during the lock down period is of no avail as Hon'ble Supreme Court has comprehensively considered Sections 2(j) and 4 of Limitation Act as well as Section 10 of GC Act and had made it clear that what was extended by Hon'ble Supreme Court during the lock down is the period of limitation and not the period upto which the delay can be condoned in exercise of discretion conferred by a statute. This is articulated with clarity and specificity in Paragraphs 18 to 21 of ***Sagufa Ahmed*** case, which reads as follows:

'18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020. It reads as follows:

“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.”

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.

20. It may be useful in this regard to make a reference to Section 10 of the General Clauses Act, 1897 which reads as follows:

*“10. **Computation of time** (1) Where, by any 19 [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all [Central Acts] and, Regulations made on or after the fourteenth day of January, 1887.”

21. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows: “

4. Expiry of prescribed period when court is closed.—

Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.— A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

**(Underlining made by this Court
for ease of reference)**

30. Hon'ble Supreme Court has made it clear that even with regard to extension of periods of limitation owing to Covid -19 situation and consequent lockdown, the same applies only to periods of limitation and not to further periods upto which the delay can be condoned in exercise of discretion conferred by the statute. This is instructive and this Court respectfully applies the same to the case on hand.

31. This Court now reverts to examining whether Southern Railways has made out sufficient cause qua delay condonation plea.

32. The reason for delay mentioned in the affidavit filed in support of captioned application is not only terse, but it is tepid and perfunctory. Only two sentences in the entire affidavit (filed in support of captioned application) talk about the reason for delay. These two sentences are contained in Paragraphs 12 and 13 of the affidavit filed in support of captioned application which read as follows:

'12. It is submitted that the Award was passed on 10.6.2019 and received by us on 13.6.2019. Since the Award was for payment of a huge sum of Rs.1,81,21,170/-, the matter was placed before the General Manager, Southern Railway and after going through the entire pleadings and perusing the documents in support thereof and after careful scrutiny it was decided to challenge the Award.

13. Due to the time taken as stated in para 12 supra, the petition to set aside the Award could not be filed in time and as such time there is delay in filing the same which is neither wilful nor wanton and if the same is not condoned the petitioners will be put to irreparable loss and hardship.

(underlining made by this Court to supply emphasis and highlight besides ease of reference)

33. There is no other averment in the affidavit regarding reason for delay that is sought to be condoned. It may well be said that this is the only reason and therefore, there are no other averments. but this lone reason also has not been set out, much less articulated with specificity and explained. As already alluded to supra, the manner in which the reason is set out is not only terse, but it is tepid and perfunctory. In this regard, this Court reminds itself of the principle in **Esha Bhattacharjee** case, being **Esha Bhattacharjee Vs. Raghunathpur Nafar Academy** reported in **(2013) 12 SCC 649**, wherein Hon'ble Supreme emphasised that care and caution has to be deployed by a party in terms pleadings/articulation in an affidavit supporting a prayer for condonation of delay. Inter-alia relevant paragraph in Esha Bhattacharjee is Paragraph 22.1(a) and the same reads as follows:

'22.1.(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.'

34. To elaborate a little more on this, what happened post receipt of award by Southern Railways on 13.06.2019 has not been set out at all. This Court is not saying that every days delay should be explained, but bare minimum details as to the date on which it was placed before the General Manager, the reasons which prevented the General Manager from scrutinizing the papers and taking a decision regarding challenging the impugned award should have been mentioned. Southern Railways is a large entity which is supported by a in-house legal team/department. When time lines under the A and C Act are so rigid and when the rigour with which the same is applied has been emphasised repeatedly by Courts, adequate care and caution ought to have been taken. In any event as affidavit in support of captioned application is bereft of particulars in this regard, this Court has no hesitation in coming to the conclusion that the reason for delay is least convincing. However, this is set out only to

make it clear that it is not harsh on the facts of this case. It has also become necessary to mention this aspect of the matter owing to the argument predicated on the expression 'prevented by sufficient cause' occurring in proviso to sub-section (3) of Section 34 of A and C Act. Southern Railways should first demonstrate that it was prevented by sufficient cause from presenting the OP within the prescribed three months for the proviso to kick in. This itself has not been done. Therefore, this Court has no hesitation in coming to the conclusion that on a demurrer, even on facts of the case, Southern Railways would not be entitled to the benefit to the proviso as there is no articulation about what prevented Southern Railways from filing the instant OP within 3 months, as merely saying General Manager had to take a decision by perusing the papers and therefore could not be presented within 3 months is least convincing. Further to be noted, this argument 'prevented by sufficient cause' expression is limited to being prevented by presenting it on 13.10.2019 (on and from 05.10.2019) and that does not pertain to three months limitation period. To be noted, after three months period in September of 2019, this Court was open and it was working till 04.10.2019. There is no explanation as to what prevented Southern

Railway from presenting this OP during the period from 14.09.2019 to 04.10.2019. This Court has no hesitation in holding that the sheet anchor submission of Southern Railways posited on 'prevented by sufficient cause' expression occurring in the proviso does not come to its aid in this case, as this expression first relates to three months prescribed period of limitation as it reads '..... prevented by sufficient cause from making the application within the said period of three months.....'. The proviso itself will come into play only on sufficient cause qua this three months being first made out.

35. The reason as to why this Court has to construe delay condonation with enormous rigour and as to why it has been applied very strictly is not far to seek. However, this Court deems it appropriate to articulate the same *infra* in paragraphs to follow.

36. As far as the A and C Act is concerned, arbitration being one of the important pillars of 'Alternate Dispute Resolution' ('ADR') mechanism, time lines are very strict as expeditious disposal is one of the critical components of this ADR mechanism and arbitration in turn is an important pillar of ADR mechanism. The scheme of the A and C

Act is such that arbitration itself should be completed within one year and only one further extension of six months by consent of parties has been provided for and any further extension can be only at the instance of the Court. Otherwise, the statutory consequence is, the mandate of the Arbitral Tribunal snaps.

37. Besides this one year and a further period of six months after which the mandate of the AT lapses, there is also a provision for Fast Track arbitration under Section 29B of the A and C Act where the parties can agree that the arbitration be completed within six months. After the arbitration is completed and an arbitral award is made, there is no provision for appeal or revision. There is only a limited window for challenge to an arbitral award under Section 34 and that also has to be made within three months from the date of receipt of award or from the date on which a request under Section 33 (for correction/interpretation) is disposed of in cases where there is a request under Section 33. The proviso prescribes a cap for condonation of delay beyond this prescribed period of three months but the cap is 30 days. Be that as it may, what is of greater significance is sub-section (6) of Section 34 which makes it clear that an application under Section 34 should be disposed of

expeditiously and in any event, within a period of one year from the date on which pre-application notice under sub-section (5) is served upon the other party. In other words, a time line of one year is prescribed for Section 34 applications also. In this regard, it is to be noted that in ***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in (2018) 9 SCC 472, Hon'ble Supreme Court has held that pre-application notice under sub-section (5) is directory and not mandatory. Though ***Bhumi Vikas Bank*** case law is an authority for the broad proposition that a pre-application notice under sub-section (5) of Section 34 is directory and not mandatory, Hon'ble Supreme Court has made an observation in ***Bhumi Vikas Bank*** that every Court dealing with an application under Section 34 should make an endeavour to stick to the one year time line. This is contained in Paragraph 26 of ***Bhumi Vikas Bank*** case law, which reads as follows:

'26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may

be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.'

(Underlining made by this Court to supply emphasis and highlight, besides ease of reference)

38. To be noted, pre-application notice under Section (5) has been held to be directory and not mandatory as mentioned supra. Therefore, this Court has repeatedly held that one year period under sub-section (6) should be reckoned from the date of presentation of Section 34 application in cases where Section 34 application is presented without a pre-application notice.

39. Post disposal of Section 34 application also, an intra-court appeal has been provided under Section 37 of A and C Act, but only for very limited kind of orders with a clear embargo by way of a negative connotation 'and from no others' within parenthesis. Sub-section (3) of Section 37 makes it clear that no second appeal shall lie from an order passed in an appeal under Section 37.

40. The above statutory scheme of A and C Act should be read in the context of Section 35 of A and C Act, which provides for finality of arbitral awards and Section 5 of A and C Act, which makes it clear that there shall be minimum judicial intervention.

41. These features of A and C Act delineated supra make it clear strict time lines run as a common chord throughout the statute and this common chord is the sublime philosophy and salutary principle underlying the A and C Act. This has been borne in mind in testing the captioned delay condonation application.

42. Owing to the narrative thus far, captioned application i.e., A.No.9150 of 2019 fails and the same stands dismissed.

43. In view of dismissal of A.No.9150 of 2019, captioned OP i.e., O.P(D).No.128930 of 2019 (filing number) is rejected as time barred. There shall be no order as to costs.

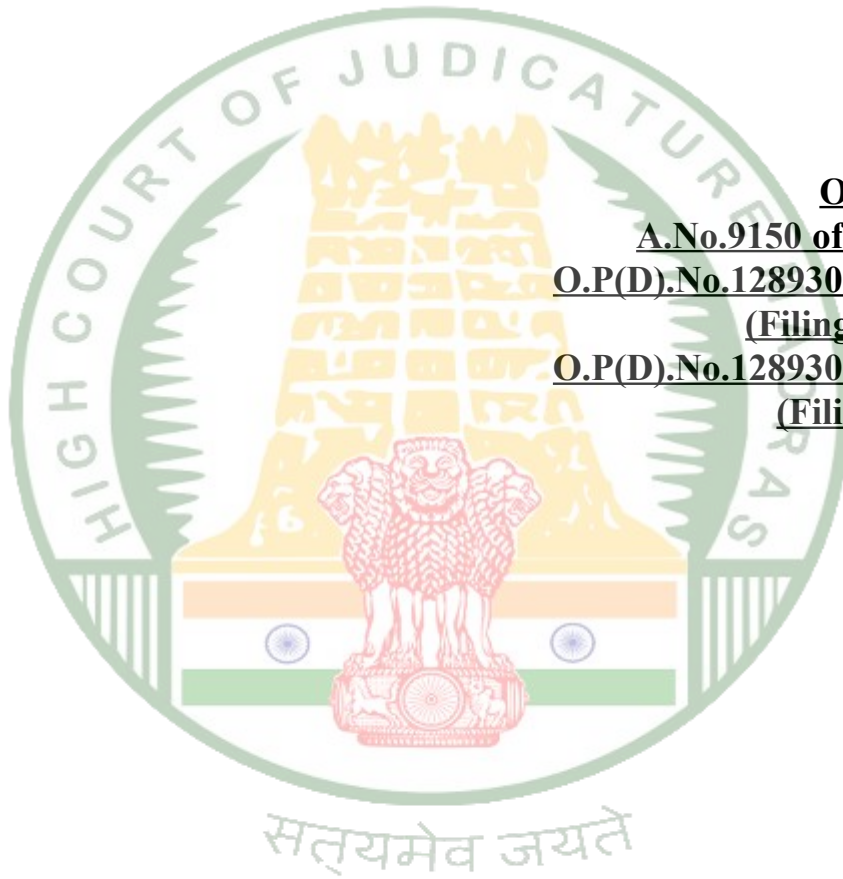
WEB COPY

01.10.2020

Speaking order: Yes
Index: Yes
gpa

A.No.9150 of 2019 in
O.P(D).No.128930 of 2019
(Filing No.)

M.SUNDAR.J.,
gpa



Order in
A.No.9150 of 2019 in
O.P(D).No.128930 of 2019
(Filing No.) &
O.P(D).No.128930 of 2019
(Filing No.)

WEB COPY **01.10.2020**