A.Nos.9610 & 9611 of 2019
in
OP.D.No.65025 of 2019

M.SUNDAR, J.

Read this in conjunction with and in continuation of proceedings made by this Court in the previous hearing on 06.03.2020, which reads as follows:

> *'There are two applications viz. A.No.9610 of 2019 and 9611 of 2019. These two applications presented under Order XIV Rule 12 of Original Side Rules of this Court, throw up a very interesting proposition.*
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> *2.Before I proceed further, to be noted, though these two matters before this Court carry the nomenclature 'application' in singular and 'applications' in plural, they are in effect matters assailing a common order made by learned Master, being common order dated 04.10.2019 made in A.Nos.5839 and 5849 of 2019. To be noted, whether such applications against an order of learned Master are 'appeals' came up for consideration before a Hon'ble Division Bench presided over by then Hon'ble Chief Justice of this Court, Hon'ble Justice A.P.Shah, in* ***Sreyas Sripal Vs. M/s.Upasana Finance Ltd.*** *in O.S.A.Nos.141 and 142 of 2007, then Hon'ble Chief Justice A.P.Shah speaking for the Bench held that the term 'appeal' occurring in Order XIV Rule 12 of Original Side Rules is a misnomer and that it is effectively a review qua order of learned Master. To be noted, as mentioned supra, instant applications on hand i.e., A.Nos.9610 and 9611 of 2019 have been presented before this Court under Order XIV Rule 12 of Original Side Rules of this Court.*
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> *3.Be that as it may, reverting to the facts of the case on hand, the main Original Petition i.e., OP.D.No.65025 of 2019 is under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', (hereinafter 'A and C Act' for the sake of brevity). Main 'Original Petition' ('OP' for brevity) is*

one assailing an arbitral award dated 14.02.2019. The exact date of receipt of the award by the protagonist of the OP is not available. Ms.Hema Srinivasan, learned counsel submits that 14.02.2019 can be taken as reckoning date for computation of limitation, as obviously the award could not have been received prior to that date.

4.As 14.02.2019 is taken as reckoning date for computation, 3 months therefrom being 3 months within the meaning of sub-section (3) of Section 34 of A and C Act, elapsed on 14.05.2019, when this Court was in summer recess. This Court reopened after summer recess on 03.06.2019 and instant OP was presented on that day. There is no disputation or disagreement before this Court that the court fee payable on main OP is Rs.1,00,000/- (Rupees One Lakh only), but the OP was presented with court fee of Rs.1,000/- (Rupees One Thousand only) on 03.06.2019. In other words, it was presented with a deficit of Rs.99,000/- qua court fee payable on the OP.

5.Thereafter, the petitioner in main OP took out aforementioned A.Nos.5839 and 5849 of 2019, with prayers to condone 28 days delay in refiling and 64 days delay in paying the deficit court fee. To be noted, extension of time for paying deficit court fee was sought under Section 149 of 'The Code of the Civil Procedure, 1908' (hereinafter 'CPC' for brevity). .In this regard, a judgment rendered by a Hon'ble Division Bench of this Court being judgment dated 30.04.2003 in ***K.Natarajan Vs. P.K.Rajasekaran*** *becomes relevant, as a similar situation of presentation on last date of limitation, but with deficit in Court fee was dealt with in this case.*

6.Learned Master dismissed both the applications i.e. applications with prayers viz. condonation of delay with representation as well as extension of time for paying deficit court fee, by a common order dated 04.10.2019 and as mentioned supra the same has been called in question in instant applications before this Court.

7.The moot question which falls for consideration is, whether presentation of OP.D.No.65025 of 2019 under Section 34 of A and C Act assailing arbitral award dated 14.02.2019 (received by the petitioner on same day) is proper presentation, as admittedly there was deficit of Rs.99,000/- qua court fee payable ?

8.In an attempt to respond to the aforesaid moot question, learned counsel for petitioner pressed into service a judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. Vs. M/s.Tejparas Associates & Exports Pvt. Ltd.*** *decided on 03.10.2019.*

9.Attention of this Court was drawn to paragraph No.11 of the said order.

10.A perusal of the facts of Tejparas Associates case brings to light that it was a matter, where original presentation was proper presentation. In other words, there was no deficit court fee issue in that matter.

11.Though not articulated in terms of case law in the order of the learned Master, learned Master has held that 3 months and 30 days under sub-section (3) of proviso to Section 34 of A and C Act is inelastic. This proposition was laid down by Hon'ble Supreme Court in ***Simplex Infrastructure Ltd. Vs. Union of India*** *reported in 2018 SCC Online SC, 2681 [subsequently, (2019) 2 SCC 455]. Simplex Infrastructure Ltd. principle is to the effect that 3 months and 30 days prescribed in sub-section (3) of proviso to Section 34 of A and C Act is non-negotiable, owing to the expression 'but not thereafter' in the said provision.*

12.Learned counsel for petitioner sought time to examine the legal position and make further submissions.

List on 11.03.2020.'

2. The aforesaid proceedings captures the trajectory of the arguments as well as the crux and gravamen of the issue that falls for consideration in the instant matter. A short chronicle is necessary and the same is as follows:

Description	***Date***
Arbitral Award	14.02.2019
3 months from the date of receipt of arbitral award dated 14.02.2019	14.05.2019
OP.D.No.6505 of 2019 presented with Court Fee of Rs.1000/-, when the Court Fee is payable is Rs.1,00,000/-. Put into deficit of Rs.99,000/- of 99%	03.06.2019
Registry returned the papers for rectification of defects	10.06.2019
30 days post three months vide proviso of sub section 3 of Section 34 of The Arbitration and Conciliation Act, 1996 elapsed on	13.06.2019
Deficit Court Fee paid on	06.08.2019
A.Nos.5839 and 5849 of 2019 filed on	07.08.2019
Master dismissed A.Nos.5839 & 5849 of 2019 by common order dated	04.10.2019
8 clear days from the date of order of learned Master elapsed on	12.10.2019
Instant applications (Appeals) under Order XIV Rule 12 of O.S.Rules filed with 12 days delay	24.10.2019

3. To be noted, a short four paragraphs affidavit running to one and half pages filed in support of A.Nos.5839 and 5849 of 2019 reads as follows:

> *1. I submit that I am the Assistant Manager Legal and the Authorised Signatory of the Petitioner.*
>
> *2. I submit that the Learned Deputy Registrar, High Court of*

Madras, had returned the petition filed by the Petition with curtained directions and corrections on 10.06.2019. The learned Deputy Registrar was pleased to direct the petitioner to file an affidavit supporting the petition by 10.07.2019. The Petitioner had already filed Rs.1,000/- as court fees and had to file the remaining within 10 days from the date when the petition was returned i.e., by 10.06.2019.

3. *It is most respectfully submitted that the delay in filing of the corrected petition and the supporting Affidavit and payment of the remaining court fees is completely inadvertent and for reasons beyond the control of the Petitioner or its Counsels.*

4. *It is humbly submitted that the delay of 64 days in payment of the court fees and the delay of 28 days in filing of the corrected petition and the supporting affidavit is neither wanton nor wilful. If the delay is not condoned, I would be put to great hardship and irreparable loss while the Respondent, on the contrary, would not be prejudiced if the delay is condoned.*

I therefore, pray that this Hon'ble Court may be pleased to

(i) condone the delay of 64 days in payment of court fees of Rs.99,000/- in O.P.No.65025/2019 and

(ii) condone the delay of 28 days in re-presenting the corrected petition and the supporting affidavit in O.P.No.65025/2019.'

4.Learned Master ordered notice and after full contest, dismissed both the applications vide a common order dated 04.10.2019. Assailing the said order, instant applications on hand were filed with a delay of 12 days, which was condoned vide order dated 25.11.2019 made by learned predecessor

Judge.

5. As already alluded to supra, earlier proceedings of this Court dated 06.03.2020 captures the crux and gravamen of issue on hand before this Court.

6. Furthering his submissions, learned counsel for applicant/appellant pressed into service a judgment made by a Division Bench of this Court in **R.Krishnamurthy and Ors. Vs. R.Venkitapathy and Ors** decided on 22.03.2018. In the considered view of this Court, **R.Krishnamurthy's** case does not come to the aid of the applicant as on facts, the OPs were presented/filed in Registry within the time prescribed under Section 34(3) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for brevity and clarity. This is articulated in paragraph 2 of **R.Krishnamurthy's** case, which reads as follows:

> '2.............................. *From the facts as recorded in the orders under appeal, it appears that the original petitions were filed in the Registry within the time prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 (in*

short 'the 1996 Act').'

7. Be that as it may, **Simplex Infrastructure Ltd. Vs. Union of India** was rendered by Hon'ble Supreme Court reported in **2018 SCC Online SC, 2681, (**after R.Krishnamurthy's case**)** on 05.12.2018. This Court is bound by the principle laid down by Hon'ble Supreme Court. Be that as it may, with regard to **R.Krishnamurthy's** case, this Court considers that the fact scenario is different and therefore, it does not come to the aid of the petitioner. In this regard, this Court reminds itself of the celebrated ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533*** and the most relevant paragraph is paragraph 9, which reads as follows :

> *'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between*

conclusions in two cases.'

8. The other judgment pressed into service by learned counsel for applicant is **Northern Railway Vs. Pioneer Publicity Corporation Pvt. Ltd.,** rendered by Hon'ble Supreme Court reported in **(2017) 11 SCC 234.** To be noted, a print out from MANU/SC/1705/2016 was placed before this Court. That is also a case where Section 34 of the A and C Act, was filed within the time stipulated. This is articulated in paragraph 1, which reads as follows:

> *'1............ under Section 34 were filed within the time stipulated under Section 34 of the Act.'*

9. As a last effort, learned counsel for applicant referred to ***Oriental Insurance Co. Ltd. Vs. M/s.Tejparas Associates & Exports Pvt. Ltd,*** which was pressed into service in the previous hearing.

10. A careful perusal of **Tejparas** case brings to light that Tejparas is an authority for the broad proposition that Section 5 of the Limitation Act has no application qua Section 34 of A and C Act besides dealing with Section 14 of the Limitation Act regarding period of exclusion of time spent

in wrong forum. This is articulated in paragraph 4 of **Tejparas** case, which reads as follows:

> *'4. At this stage, the applicant insurance company filed an application dated 03.05.2008 under Section 14 of the Limitation Act, seeking that the time spent in the proceedings before the learned District Judge, Jaipur, be excluded and the petition be entertained on its merits.'*

11. **Tejparas** was a case wherein, time spent by a party in a wrong forum i.e., the Court of District Judge, Jaipur was sought to be excluded. Therefore, it is clearly distinguishable on facts by applying the aforementioned time honoured **Padma Sundara Rao** principle.

12. Learned counsel for respondent Mr.Vinod Kumar of J.Sagar Associates, pointed out that the 4 paras affidavit running to one and half pages filed in support of A.Nos.5839 and 5849 of 2019 before learned Master is cryptic and bereft of material particulars. To be noted, this has already been alluded to supra. Burden of the song or the tune that is being sung now in the applications/appeals before this Court are completely different. To be noted, there is no mention about the floods or other reasons, which have been alluded to now. It was urged that this is clearly an

afterthought. Be that as it may, this Court has already dealt with a similar issue in **General Manager and Others Vs. Veeyar Engineers & Contractors** reported in **2020 (1) TLNJ 526 (Civil), 2019 SCC Online Mad 5586.** To be noted, most relevant paragraphs in Veeyar Engineers have seen extracted and reproduced in the next paragraph of this order.

13.In the instant case, all too critical question is whether presentation with court fee of Rs.1000/- (Rupees One Thousand only) alone, while the admitted court fee payable is Rs.1,00,000/- (Rupees one lakh only) i.e., with a deficit of Rs.99,000/- (Rupees Ninety Nine thousand only) is proper presentation. This aspect of the matter has been dealt with in paragraphs 10 to 15 of **Veeyar Engineers** case, which read as follows:

> *'10. From the maintainability note placed before this Court by the Registry and a scrutiny of the entire case file placed before this Court, viewed in the context of submissions made by learned senior counsel for respondent, it comes to light that filing on 17.04.2018 is not proper filing and it does not arrest the running of limitation period.*
>
> *11. The reason, as to why this is improper presentation, is as follows:*
>
> *a) The entire Court fee payable on instant OP, even according to the memo of valuation of petitioners is Rs.1,07,515/- .*
>
> *b) On 17.04.2018, a perusal of the case file and the objections/return sheet of the Registry reveals that*

petition and petition copy alone had been filed. This is objection No.34. Therefore, it is obvious that on 17.04.2018, even one rupee Court fee was not paid and obviously the impugned amended award had not been filed along with the petition. (A careful perusal of case file placed before this Court reveals that this position is correct).

c) Therefore, Registry returned the papers on 19.04.2018.

12. Post return, papers were presented on 11.07.2018, but only with partial Court Fee of Rs.5,000/- (Rupees Five Thousand only) as opposed to Rs.1,07,515/- being total court fee payable. Therefore, even on 11.07.2018, the delay did not get arrested. There was a second return/objection by Registry on 24.07.2018 wherein it has been clearly stated that previous returns /objections are to be complied with/removed.

13. Ultimately OP was presented on 18.12.2018 together with full Court Fee of Rs.1,07,750/- (Rupees One Lakh Seven Thousand Seven Hundred and Fifty only). To be noted exact court fee paid is Rs.1,07,750/- (Rupees One Lakh Seven Thousand Seven Hundred and Fifty only). This is evidenced from the seal of the Court Fees stamp papers also (besides other aspects of case file which have been examined carefully as mentioned supra).

14. There was a third return on 13.02.2019 and further re-presentation on 15.02.2019. This is mentioned only for completion of facts as this has no bearing qua maintainability issue.

15. Therefore, the crucial and critical question is as to whether the delay in filing instant OP was arrested on 17.04.2018 and whether it is saved by being hit by sub-section (3) of Section 34 of A & C Act. This Court is of the considered view that it was certainly not arrested on 17.04.2018 and only petition and a copy of the petition alone were filed i.e. without a single rupee towards court fee and without the impugned award or a copy of the same. This view is fortified by a Division Bench judgment of this Court made in A.S.No.375 of

1989 in the case of K.Natarajan Vs. P.K.Rajasekaran, being judgment dated 30.04.2003. Principles in this regard in such situation were culled out and laid down. Such principles are contained in paragraph 21 of the said judgment of the Hon'ble Division Bench and Paragraph 21 reads as follows:

> *'21.We deem it necessary to clarify the legal position and lay down the procedure to be followed as under:*
>
> *(1) Section 149 of Code of Civil Procedure is a proviso to Section 4 of the Tamilnadu Court Fees and Suits Valuation Act, 1955.*
> *(2) The word 'document' employed in Section 149 of Code of Civil Procedure would include plaint also.*
> *(3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays).*
> *(4) If the suit is presented on the last date of limitation affixing less Court fee, than the one mentioned in the details of valuation in the plaint, an affidavit shall be filed by the plaintiff giving reasons for not paying the requisite Court fee.*
> *(5) In such cases, the Court shall before exercising its discretion and granting time to pay the deficit Court fee, shall order notice to the defendants and consider their objections, if any. However, such notice is not necessary in cases where the plaintiff has paid almost the entirety of the requisite court fee and the Court is satisfied on affidavit by the party that the mistake happened due to some bona fide reasons such as calculation mistake or the alike.*
> *(6) The discretion referred to in Section 149 of Code of Civil Procedure is a judicial discretion*

and the same has to be exercised in accordance with the well established principles of law.

(7) But however, in cases where the time granted to pay the deficit Court fee falls within the period of limitation, the defendant need not be heard.

(7A) In case where the plaint is presented well within the period of limitation with deficit court fee and the court returns the plaint to rectify the defect giving some time (2 or 3 weeks), which also falls within the period of limitation, but the plaint is re-presented paying deficit court fee after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial court fee (not almost entirety) at the first instance, before condoning the delay in paying the deficit court fee.

(8) In cases where part of the time granted to pay the deficit Court fee falls outside the period of limitation and the deficit court fee is paid within the time of limitation (i.e., the plaint is represented with requisite court fee), the court need not wait for the objections of the defendant and the plaint can be straight away numbered.

(9) The court should exercise its judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (bona fide mistake) valued under particular provisions of law under Court Fee Act or where he could not pay the required Court fee for the reasons beyond his control, due to some bona fide reasons, the Court shall condone the delay. Payment of substantial court fee is a circumstance, which will go in favour of the claim of the plaintiff that a bona fide mistake has crept in. But however, in cases where the plaintiff acted wilfully to harass the defendant (like wilful negligence in paying

> *court fee, awaiting the result of some other litigation, expecting compromise, etc.).*
> *(10) If the court had exercised its discretion without issuing notice, then it is open to the defendant to file application under Section 151 of Code of Civil Procedure for proper relief. It will be open to the defendant to file a revision under Article 227 of Constitution of ndia. That apart, objection can also be raised at the trial or even at the appellate stage, since the failure to exercise judicial discretion in a manner known to law (as laid down in various decisions of the Supreme Court) amounts to Court applying a wrong provision of law.'*

14. In paragraph 15 of **Veeyar Engineers** case, paragraph 21 of **K.Natarajan** case has been extracted and reproduced supra. In other words, **K.Natarajan** case is of relevance. To be noted, in the instant case, it is nobody's case that when OP was presented with huge deficit court fee on 03.06.2019 and affidavit was filed thereafter. Therefore, the presentation made on 03.06.2019 is clearly not proper presentation and does not arrest limitation period prescribed under Sub Section (3) of Section 34 of A and C Act. This means that the re-presentation with proper court fee, if any, ought to have been done within 30 days period, which elapsed on 13.06.2019. Admittedly, re-presentation with deficit court fee of Rs.99,000/- (Rupees Ninety nine Thousand only) was made only on 06.08.2019 with cryptic

aforementioned 4 paragraphs affidavit.

15. It is in this context that ***Simplex Infrastructure Ltd. Vs. Union of India*** reported in **2018 SCC Online SC, 2681** becomes relevant. In **Simplex Infrastructure**, the expression 'but not thereafter', occurring in proviso to sub section (3) of Section 34 of A and C Act came up for consideration and Hon'ble Supreme Court has held that delay of 131 days cannot be condoned and that doing so will be breach of statutory mandate. To be noted, delay in that case was 131 days. The relevant paragraph is paragraph 18 and the same reads as follows:

> *'18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. <u>The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days</u>. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-*

section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.'

(Underlining made by this Court to supply emphasis and highlight)

16. To be noted, this Court has followed ***Simplex Infrastructure*** principle in **Veeyar Engineers.** This is articulated in paragraph 21 of ***Veeyar Engineers,*** which reads as follows:

'21. In this regard, it is necessary to refer to a recent judgment of Hon'ble Supreme Court in Simplex Infrastructure being Simplex Infrastructure Ltd. vs. Union of India reported in 2018 SCC Online SC, 2681. The relevant paragraph is paragraph 18 and the same reads as follows:

18. 'A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read *along with the proviso* *to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.'*

(Underlining made by this Court to supply emphasis and highlight)

17. Thereafter, what is of utmost relevance is paragraphs 31 and 32 of **Veeyar Engineers,** which read as follows:

'31. Though law is well settled that when a special statute prescribes a special time frame,Section 5 of the Limitation act, 1963 does not apply, this Court has reminded itself that sub-section (3) and proviso thereto to section 34 of A & C Act which fall in this category should also be seen in the perspective of aforesaid pillars of ADR Mechanism. If parties who have opted for ADR Mechanism are allowed to leisurely come before this Court under section 34, it will lead to a situation where salutary principles and sublime philosophies underlying the ADR Mechanism (which have been described as pillars on which edifice of law governing ADR Mechanism is built) can be easily neutralised, nullified and defeated by resorting to procrastination. This Court deems it appropriate to set out that this court has reminded itself about this aspect of the matter also.

32. If the instant petition is held to be maintainable, besides being impermissible owing to section 34(3) and proviso thereto and the overriding section 149 of CPC (though not invoked), it will also create an avenue and may open the floodgates for litigants to approach this court leisurely and defeat the objectives of ADR Mechanism. Therefore, this court is convinced that the instant OP is clearly not maintainable. In other words, entertaining instant OP will pave the way for *litigants, who intend to procrastinate, to merely file some sheets of paper without proper presentation, i.e., without proper court fee or impugned order and thereafter, endlessly extend the limitation prescribed. This will open floodgates which will dilute and wash away the principle underlying ADR Mechanism. Though this Court has no hesitation in holding that O.P.Diary No.18375 of 2018 is not maintainable owing to plain operation of provisions of law itself, these aspects/principles touching upon 'ADR Mechanism' have been alluded to only as additional phenomena.'*

18. This Court is informed by both sides that to the best of their research **Veeyar Engineers** is holding the field and it does not appear to have been assailed any further.

19. In the light of the narrative thus far, this Court finds that there is no ground for interfering with the order of the learned Master dated 04.10.2019. To be noted, learned Master's order proceeds on the basis that there is 64 days delay in paying deficit court fee, but it is pointed that this 64 days when even a day's delay is not condonable this inadvertent numerical error, if this so is of no consequence. The principle laid down is correct and this Court, owing to all that have been set out supra is of the considered view that there is no need to interfere with the order of learned Master. Both the applications fail and the same are dismissed. Considering the nature of the

matter and the submissions made, there shall be no order as to costs.

11.03.2020
(1/2)

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M.SUNDAR, J.

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**A.Nos.9610 & 9611 of 2019
in
OP.D.No.65025 of 2019**

11.03.2020

(1/2)