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Application Nos.4482, 4483, 4484, 4485, 4486 of 2021
in A.Nos.3634, 3638, 3636, 3639, 3637 of 2021

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SENTHILKUMAR RAMAMOORTHY, J.

These five applications are directed against the common order of the learned Master by which five applications to condone delay in re-presentation of five petitions under section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) were rejected.

2. The admitted position is that all five arbitral awards were pronounced on 01.09.2019. While the applicant had stated that the section 34 petitions were presented before this Court on 05.12.2019, the learned Master recorded a factual finding, upon perusal of the records, that such petition was presented on 29.11.2019. Therefore, it cannot be said that the section 34 petitions were filed after expiry of the period of limitation of three months from the date of receipt of the respective award. This is a critical fact for purposes of adjudication of these applications.

3. The petitions were returned on 05.12.2019 on account of defects.

The 1st re-presentation was made on 17.12.2019. It appears that the petitions

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were returned again on 22.01.2020. Thereafter, it appears that there was another return on 15.03.2020. Eventually, the petitions were re-presented on 14.09.2021 along with applications to condone delay in re-presentation. The impugned order was passed in these facts and circumstances.

4. The applicant cites a few reasons for such delay. The 1st reason stated in such connection is the unavailability of counsel during the Christmas and Pongal vacations between end-2019 and mid-January 2020. The 2nd reason relates to the clerk in the office of the petitioner's counsel, who is said to have left the services of the petitioner's counsel. The 3rd reason is the restricted functioning of this Court during the Covid-19 pandemic and the inability to access the chambers of counsel on such account.

5. As regards the legal position, the applicant contends that the period of limitation in Section 34(3) of the Arbitration Act does not apply to a case of re-presentation as held by the Hon'ble Supreme Court in *Northern Railway v. Pioneer Publicity Corporation Private Limited* reported in **(2017) 11 SCC 234 (Northern Railway)**. In addition, since the delay in re-presentation has been explained properly, the applicant contends that sufficient cause is made out to condone delay.



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6. On the contrary, the respondent submits that the explanation provided by the applicant is wholly inadequate. By referring extensively to the affidavit filed by the applicant before the learned Master, the respondent contends that such explanation does not constitute sufficient cause even for purposes of Section 5 of the Limitation Act, 1963. The respondent points out that a liberal approach to the condonation of delay should not be adopted in matters arising under the Arbitration Act because it would defeat the object and purpose of the enactment. The respondent relies upon the judgment of this Court in *The General Manager, Southern Railway and another v. M/s.Veeyar Engineers & Contractors, O.P.D.No.18376 of 2018, order dated 04.04.2019*, whereby this Court held that a filing which is defective in essential aspects cannot be treated as a filing for purposes of Section 34 of the Arbitration Act. The respondent also relies upon the judgment of the Delhi High Court in *Oil and Natural Gas Corporation Ltd v. Planetcast Technologies Ltd., OMP(Comm).No.380 of 2019*. After pointing out that the said judgment noticed the judgment of the Hon'ble Supreme Court in *Northern Railway*, the respondent pointed out that the Delhi High Court nevertheless concluded that defects in filing should be cured within the three months + 90 day period specified in Section 34 (3) of the Arbitration Act.



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7. At the outset, it should be noticed that the Arbitration Act specifies time limits for every stage of the process. A time limit is specified for completion of pleadings before the arbitral tribunal and for the conclusion of proceedings by pronouncing an award in respect thereof. Similarly, a period of limitation is specified for challenging an award, including the outer limit beyond which delay in filing cannot be condoned. Section 34 petitions are also required to be adjudicated within a prescribed time limit after Act 3 of 2016 came into force. Therefore, the applications by the applicant to condone the delay in re-presentation should be examined in that context.

8. The applicant has explained the delay by citing the reasons adverted to earlier. The learned Master, upon consideration of the same, concluded that the delay should not be condoned because the applicant has repeatedly re-presented the petition in order to defeat the object and purpose of Section 34 of the Arbitration Act. In principle, the concerns expressed by the learned Master are unexceptionable. The expression “sufficient cause” allows for considerable latitude and discretion, even ordinarily, and the threshold for inferring sufficient cause, in the context of re-presentation is, generally, set lower than that for condoning delay in filing. As indicated earlier, this should, nonetheless, be balanced in the context of the Arbitration Act so as to deter



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defective filing and repeated re-presentation, which, if left unchecked, would derail all the time limits fixed in the Arbitration Act.

9. Upon consideration of all the aforesaid, I am of the view that a balance should be struck. Such balance may be achieved by allowing these applications subject to payment of costs. The applicant shall pay costs assessed in a sum of Rs.20,000/- per application to the respondent. Such payment shall be made within a period of one week from the date of receipt of a copy of this order. Subject to fulfillment of this condition, the applications are allowed by setting aside the common order dated 28.10.2021 of the learned Master in application Nos.3634, 3636 to 3639 of 2021 in O.P.D.Nos.105690, 150691, 150645, 150682, 150692 of 2019. As a corollary, the Registry is directed to number and list the original petitions, if they are otherwise in order.

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