



A.No.3690 of 2022

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in
O.A.No.910 of 2010

KRISHNAN RAMASAMY, J.

This application has been filed seeking to condone the delay of 769 days in filing the petition to restore the Original Petition No.910 of 2010 which was dismissed for non-prosecution on 15.11.2017.

2. It appears that the applicant has filed the above said Original Petition, challenging the award dated 29.12.2009 passed by the Arbitral Tribunal in favour of the 1st respondent herein. The Original Petition has been listed from time to time and even on 15.11.2017 when it was listed for dismissal, there was no representation on behalf of the applicant/petitioner and hence, it was dismissed for non-prosecution. Now, after a lapse of 769 days, the applicant has come forward with the present application, seeking to condone the delay in filing the petition to restore the Original Petition.

3. The learned counsel appearing for the applicant would submit that though the applicant/Corporation engaged a counsel, but unfortunately, he



did not appear before the Court when the matter was listed, which led to the dismissal of the petition for non-prosecution. He would further submit that the officials attached to the applicant/Corporation contacted the counsel on record to know the status of the petition, but he did not furnish any information and when the case details were hosted on the website of this Court, during December, 2019, the applicant/Corporation came to know about the dismissal of the petition as early as on 15.1.2017 and thereafter, the applicant/Corporation preferred change of vakalat and filed the present application to restore the petition and in the mean time, there occurred considerable delay, which is neither willful nor wanton, but for the counsel on record, who did not pursue the matter properly before this Court. Hence, the learned counsel would urge this Court to condone the delay and entertain the petition filed for restoration of the Original Petition.

4. On the other hand, the learned counsel appearing for the respondents would submit that the application lacks merits since no bona fide and convincing reasons have been assigned for condoning the enormous delay of 760 days in filing the petition for restoration of the



Original Petition. He would submit that though applicant/Corporation filed the petition after two years from the date of dismissal of the petition on 23.01.2020, however, later they re-presented the petition after complying with the objections raised by the Office only on 25.08.2022 and therefore, virtually there occurred nearly five years of delay in bringing up the present application. He pointed out that being higher officials of the Government attached to the applicant/Corporation are well aware of the availability of the status details of the case on the Website of this Court, while so, it is unfortunate to note that though the O.P. was dismissed in the year 2017, the applicant came to know about the dismissal of the same only in the year 2019 and moved the application with enormous delay, which cannot be entertained as there was gross negligence and deliberate inaction on the part of the officials of the applicant/Corporation. Hence, the learned counsel would urge this Court to dismiss the application.

5. Heard the learned counsel appearing for the parties and perused the entire materials available on record.



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6. It is no doubt true that a liberal approach should be adopted in condoning delay, however, it is equally well settled that delay cannot be condoned by mere asking and the application for condonation of delay should be supported and should at least disclose 'sufficient cause' for not approaching the Courts within the limitation prescribed. In the present case, it is not in dispute that in the year 2010, the applicant has filed the Original Petition, challenging the award dated 21.12.2009 passed by the Arbitral Tribunal. Thereafter, no interest has exhibited by the applicant/Corporation till the matter was listed in the year 2017. In fact, in the year, the matter was listed thrice, viz., 12.10.2017, 13.10.2017 and on 15.11.2017, on which date, the Original Petition was dismissed for non-prosecution since there was no representation on behalf of the applicant/petitioner. Even according to the applicant as stated in para 7 of the affidavit, they came to know about the dismissal of the O.P. during the last week of December, 2019 and they moved the petition for restoration of the O.P. along with delay condone petition on 23.01.2020 with many defects based on which, the Office has returned the same. However, it is pertinent to note that it took nearly six months time to comply and re-present the same and thereafter, in the year



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2022 only, they re-presented it after complying the defects. Further, the only reason assigned for the enormous delay is that the counsel engaged by the applicant/Corporation did not appear when the O.P. was listed and he has not furnished any information about the status of the case, which prompted the applicant/Corporation to prefer change of vakalath. In fact, the status of every case on the file of this Court is very much available on the Website of this Court and the officials of the applicant/Corporation could very well get the information. However, after filing the O.P. in the year 2010 till December, 2019, the applicant/Corporation has not evinced any interest to follow up the case and not even contacted their counsel. Only after coming to know the dismissal of the O.P. for non-prosecution, they contacted their counsel, which shows lethargic attitude and negligence on the part of the officials of the applicant/Corporation, who are under a special obligation to ensure that they perform their duties with diligence and commitment. Therefore, this Court is of the view that the reason assigned for the delay is not convincing much less satisfactory.

7. In this regard, it is worthwhile to refer a decision of the Hon'ble



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Supreme Court reported in “*Office of the Chief Post Master versus Living*

Media India Ltd.” in Civil Appeal No.2474 & 2475 of 2012, wherein, it has

been held as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot



be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

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8. In the present case also, as there was no satisfactory explanation offered by the applicant/Corporation for the delay, this Court is unable to entertain the present application by condoning the huge delay.

9. In the light of the above discussion, the Application fails and it is dismissed. No costs.

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15.12.2022

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