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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.P.No.18726 of 2021

in

C.M.A.No.99 of 2010

Union of India,
Rep. by Chief Engineer,
Chennai Zone,
Island Grounds, Chennai.
Further rep. by
Garrison Engineer,
Wellington,
The Nilgiris.

.. Petitioner/Appellant

Vs.

1. M/s. Dhirubhai D.Thumba & Co.,
"Patel Chambers" 1st floor,
No.10-3-152/8, East Maredpally,
Secundrabad - 500 026.

2. Shri Krishnakumar,
Chief Engineer & Sole Arbitrator,
Penal of Arbitrators Pune,
CWE KIRKEE Complex,
Range Hills Road, Krkeepert,
Pune - 411 003.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 565 days in filing the petition to set aside the order of dismissal dated 26.11.2019 passed in C.M.A.No.99 of 2010.

Prayer in CMA.No.99 of 2010:-

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration Act 1940 r/w the Arbitration & Conciliation Act, 1996, to set aside the Award passed by the 2nd respondent dated 27.12.2002 in PAP/7069/3/E8 to pay a sum of Rs.15,29,200/- with interest in favour of the 1st respondent and confirmed by the Learned District Judge, Nilgiris at Udthagamandalam in A.R.O.P.No.21 of 2005 dated 24.03.2007 and to direct the the 1st respondent to pay a sum of Rs.6,84,015/- to the appellant with interest at 18% p.a from the certified date of completion i.e



23.10.1997 till the date of payment to the appellant herein as the claim in the Arbitration Proceedings.

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For Petitioner : Mr.A.R.Sakthivel
Senior Panel Counsel,
Central Government Standing Counsel

For R1 : Mr.N.S.Amogh Simha
for Mr.K.Gowtham Kumar

O R D E R

(The matter is heard through "Video Conferencing".)

The present petition is filed to condone the delay of 565 days in filing the petition to set aside the order of dismissal dated 26.11.2019 made in C.M.A.No.99 of 2010.

2.The petitioner herein filed C.M.A.No.99 of 2010 challenging the order dated 24.03.2007 made in A.R.O.P.No.21 of 2005 confirming the award passed by the 2nd respondent dated 27.12.2002 in PAP/7069/3/E8 directing the petitioner to pay a sum of Rs.15,29,200/- (Rupees Fifteen Lakhs Twenty Nine Thousand Two Hundred Only). The said C.M.A.No.99 of 2010 was dismissed for default on 26.11.2019. Thereafter, the petitioner has come out with the present Civil Miscellaneous Petition to condone the delay of 565 days in filing the petition to set aside the order of dismissal dated 26.11.2019.

3.The learned Central Government Standing Counsel appearing for the petitioner contended that when the C.M.A.No.99 of 2010 was posted for final hearing on 25.11.2019, the counsel for the petitioner failed to see the cause list and did not appear. Then the said C.M.A.No.99 of 2010 was posted for dismissal on 26.11.2019. On that day also, the counsel for the petitioner failed to note the listing of C.M.A.No.99 of 2010 and hence, C.M.A.No.99 of 2010 was dismissed for default. Subsequently, due to COVID lockdown and no regular Courts are functioning, the petitioner did not contact the counsel on record. The petitioner came to know about dismissal of C.M.A.No.99 of 2010 only on receipt of summons issued by the District Court in E.A.No.2 of 2021 in E.P.No.9 of 2009 for payment out of the amount deposited by the petitioner. Non-appearance of the Advocate is neither wilful nor wanton. The petitioner contacted their Advocate immediately and filed the present petition. If the delay is not condoned, serious prejudice will be caused to the petitioner and prayed for allowing the Civil Miscellaneous Petition. In support



of his contention, he relied on the following judgments:

(i) Judgment of the Hon'ble Apex Court reported in 2002 (5) SCC 510, [M/s. I.T.I. Ltd. Vs. M/s. Siemens Public Communications Network Ltd.];

Relevant portion of the above judgment is extensively extracted by this Court in the judgment reported in 2007 (6) MLJ 570, [Srikumar Textiles (P) Ltd., G1, Industrial Estate, Madurai-7 and others Vs. Sundaram Finance Ltd., No.21, Pattulos Road, Chennai], extracted herein below.

(ii) Judgment of Madurai Bench of this Court reported in 2007 (6) MLJ 570, cited supra, wherein the Madurai Bench of this Court at paragraph Nos.28, 30, 32 & 33 has held as follows:

" ... 28.While deciding the maintainability of the revision petition filed under Section 115 of C.P.C., against the order made by the Civil Court in an appeal preferred under Section 37 of the Act, the supreme Court in I.T.I Ltd. v. Siemens public communications Networks Ltd., held that when there is no express exclusion in the Arbitration Act, it cannot be inferred that the C.P.C., is not applicable to the proceedings arising out of an order passed under the provisions of the Arbitration Act. In Paragraph Nos. 10 and 11, the supreme Court held as follows:

' ... it is true in the present Act application of the Code is not specifically provided for but what is to be noted is: Is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a civil Court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.

11. It has been held by this Court in more than one case that the jurisdiction of the civil Court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the Civil



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Courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the Court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the, extent stated in Section 37 (2), we cannot draw an inference that merely because the Act has not provided the C.P.C., to be applicable, by inference it should be held that the Code is inapplicable. This general principle apart, this issue is not settled by the judgment of a three Judge Bench of this Court in the case of Bhatia International v. Bulk Trading S.A. and Anr. in C.A. No. 6527 of 2001 decided on 13.03.2002 wherein while dealing with a similar argument arising out of the present Act, this Court held: "while examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by the inferential conclusion the Court arrives at the same when such a conclusion is only conclusion.

In paragraph 13 of the said judgment, the supreme Court repelled the contention of the learned Counsel of the appellant therein that the revision is not maintainable in view of the bar under Section 5 of the Act. Paragraph 13 of the judgment is extracted hereunder:

'The term 'Court' referred to in the said provision is defined under Section 2(e) of the Act. From the said definition, it is clear that the appeal is not to any designated person but to a civil Court. In such a situation, the proceedings, before such Court will have to be controlled by the provisions of the Code therefore, the remedy by way of a revision under Section 115 of the Code will not amount to a judicial intervention not provided for by part-1 of the Act. To put it in other



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words, when the Act under Section 37 provided for an appeal, to the Civil Court and the application of the Code not having been expressly barred, the reversional jurisdiction of the High Court gets attracted. If that be so, the bar under Section 5 will not be attracted because conferment of appellate power on the Civil Court in part 1 of the Act attracts the provisions of the Code also.

30. The extent of judicial intervention or the restriction placed on the Court is confined only to the proceedings pending before the Arbitral Tribunal to the extent so provided under the Act. In other words, the provisions of the Civil Procedure Code, may not be applicable to the proceedings pending before the Arbitral Tribunal except so provided in part-I of the Act. The jurisdiction of a Civil Court is determinable by application of the provisions of Civil Procedure Code. Once the matter goes out of the hands of the Arbitral Tribunal to the Civil Court, the provisions, contained in the Civil Procedure Code are applicable to all the proceedings, i.e., orders or appeals arising out of provisions of Arbitration Act. Since the proceedings before the Court are of civil nature, whatever procedure applicable and followed for other civil proceedings, equally apply to the proceedings arising out of orders passed under Sections 9, 27, 34, 36 and 37 of the Act. In view of the decision of the Supreme Court and this Court, the issue as to whether the civil Procedure Code is applicable to the Arbitral proceedings pending on the file of the civil Court is no longer res integra. The statute does not exclude the applicability of Civil Procedure Code to the proceedings arising out of the Arbitration Act. The non-obstinate clause in Section 5 of Act. does not take away the powers of the Principal Civil Court i.e., original jurisdiction in a District of the High Court in applying the Civil Procedure Code, while deciding



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the matters arising out of the Act. As regards the decision made by the Arbitral Tribunal, any party aggrieved by the decision can apply to the Civil Court under Section 34 of the Act to set aside the award. Judicial intervention is permissible in any matters arising out of Sections 9, 27, 34, 36 and 37 in part-1 of the Act and provisions, of the Code of the Civil Procedure Code are applicable to such proceedings.

32. The question left for consideration is whether the appellants have offered sufficient cause for their absence on 13.19.2004. It is stated in the affidavit filed in support of I. As., that when the Arbitration petitions were posted on 10.10.2004, on the request of the respondent for filing written objections, it was passed over till afternoon. When matters were taken up in the evening learned Counsel for the appellants was absent and the Arbitration Original Petitions, were dismissed for default and the restoration applications were filed after 6 days. There is no undue delay in filing the above applications. The track record of the appellants does not indicate that they have deliberately delayed the proceedings before the Civil Court and therefore this Court is of the view that there is no need to impose any condition such as payment or deposit of a portion of award amount into the Court, as a condition precedent for restoration of the Arbitration Original Petitions. I am satisfied with the adequacy of the cause shown by the appellants for restoration of the Original Petitions and I am not inclined to accept the objection of the respondent that the appellants have deliberately protracted the proceedings. Considering the quantum of the award, ends of justice would be met if sufficient opportunity is given to the appellants before the competent Civil Court to adjudicate the correctness of the award passed by the Arbitral Tribunal.



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intervene except so provided wherever under this Act.

22. We are absolutely conscious that the principle stated in the aforesaid verdict pertaining to interference of exercise of jurisdiction was in relation to any order passed by the arbitral tribunal. However, we have referred to the same to exposit and underline the stress on the minimal intervention of the court. In essence it has to be remembered that the concept of dispute resolution under the law of arbitration, rests on the fulcrum of promptitude.

27. Section 5 which commences with a non-obstante clause clearly stipulates that no judicial authority shall interfere except where so provided in Part 1 of the 1996 Act. As we perceive, the 1996 Act is a complete Code and Section 5 in categorical terms along with other provisions, lead to a definite conclusion that no other provision can be attracted. Thus, the application of CPC is not conceived of and, therefore, as a natural corollary, the cross-objection cannot be entertained. Though we express our view in the present manner, the judgment rendered in ITI Ltd. (supra) is a binding precedent. The three-Judge Bench decision in International Security & Intelligence Agency Ltd. (supra) can be distinguished as that is under the 1940 Act which has Section 41 which clearly states that the procedure of CPC would be applicable to appeals. The analysis made in ITI Ltd. (supra) to the effect that merely because the 1996 Act does not provide CPC to be applicable, it should not be inferred that the Code is inapplicable seems to be incorrect, for the scheme of the 1996 Act clearly envisages otherwise and the legislative intendment also so postulates.

28. As we are unable to follow the view expressed in ITI Ltd. (supra) and we are of the considered opinion that the said decision deserves to be re-considered by a larger Bench. Let the papers be placed



before the Hon'ble the Chief Justice of India for constitution of an appropriate larger Bench."

(ii) Judgment of the Hon'ble Apex Court reported in (2020) 15 SCC 706, [Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another], wherein the Hon'ble Apex Court at paragraph Nos.15 to 17 & 23 has held as follows:

" ... 15. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time limits set down for disposal of the arbitral proceedings themselves but time limits have also been set down for Section 34 references to be decided. Equally, in Union of India vs. M/s Varindera Const. Ltd., dated 17.09.2018, disposing of SLP (C) No. 23155/2013, this Court has imposed the self-same limitation on first appeals under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.

16. Most significant of all is the non-obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years.



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At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

23. We reiterate that the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a special act and a self contained code dealing with arbitration. This Court in *Fuerst Day Lawson Limited (supra)*, has specifically held as follows:

"89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in *P.S. Sathappan v. Andha Bank Ltd.*, (2004) 11 SCC 672 was held to be a self-contained code.

Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of *Tulzapurkar, J.*, that it carries with it

"a negative import that only 'such acts as are mentioned in the Act are permissible to be done and acts or things not



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contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact that an order referring parties to arbitration under Section 8 is not appealable under Section 37 (1)(a) and would, therefore, not be appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone."

(iv) Full Bench Judgment of the Hon'ble Apex Court reported in (2021) 6 SCC 460 [Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited], wherein the Full Bench of the Hon'ble Apex Court at paragraph Nos.34, 35, 53 & 55, 56, 58, 59 & 62 has held as follows:

" ... 34. The vexed question which faces us is whether, first and foremost, the application of section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr. George. The first important thing to note is that section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act. Section 13(1A) of the Commercial Courts Act only provides for a



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limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.

35.It may also be pointed out that though the object of expeditious disposal of appeals is laid down in section 14 of the Commercial Courts Act, the language of section 14 makes it clear that the period of six months spoken of is directory and not mandatory. By way of contrast, section 16 of the Commercial Courts Act read with the Schedule thereof and the amendment made to Order VIII Rule 1 of CPC, would make it clear that the defendant in a suit is given 30 days to file a written statement, which period cannot be extended beyond 120 days from the date of service of the summons; and on expiry of the said period, the defendant forfeits the right to file the written statement and the court cannot allow the written statement to be taken on record. This provision was enacted as a result of the judgment of this Court in Salem Advocate Bar Assn. (II) v. Union of India, (2005) 6 SCC 344.

53.However, the matter does not end here. The question still arises as to the application of section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in N.V. International (supra) which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.

55.Reading the Arbitration Act and the Commercial Courts Act as a whole, it is clear that when section 37 of the Arbitration Act is read with either Article 116 or 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, the object and context provided by the



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aforesaid statutes, read as a whole, is the speedy disposal of appeals filed under section 37 of the Arbitration Act. To read section 5 of the Limitation Act consistently with the aforesaid object, it is necessary to discover as to what the expression "sufficient cause" means in the context of condoning delay in filing appeals under section 37 of the Arbitration Act.

56. The expression "sufficient cause" contained in section 5 of the Limitation Act is elastic enough to yield different results depending upon the object and context of a statute. Thus, in *Ajmer Kaur v. State of Punjab*, (2004) 7 SCC 381, this Court, in the context of section 11(5) of the Punjab Land Reforms Act, 1972, held as follows:

"10. Permitting an application under Section 11(5) to be moved at any time would have disastrous consequences. The State Government in which the land vests on being declared as surplus, will not be able to utilise the same. The State Government cannot be made to wait indefinitely before putting the land to use. Where the land is utilised by the State Government, a consequence of the order passed subsequently could be of divesting it of the land. Taking the facts of the present case by way of an illustration, it would mean that the land which stood mutated in the State Government in 1982 and which was allotted by the State Government to third parties in 1983, would as a result of reopening the settled position, lead to third parties being asked to restore back the land to the State Government and the State Government in turn would have to be divested of the land. The land will in turn be



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restored to the landowner. This will be the result of the land being declared by the Collector as not surplus with the landowner. The effect of permitting such a situation will be that the land will remain in a situation of flux. There will be no finality. The very purpose of the legislation will be defeated. The allottee will not be able to utilise the land for fear of being divested in the event of deaths and births in the family of the landowners. Deaths and births are events which are bound to occur. Therefore, it is reasonable to read a time-limit in sub-section (5) of Section 11. The concept of reasonable time in the given facts would be most appropriate. An application must be moved within a reasonable time. The facts of the present case demonstrate that redetermination under sub-section (5) of Section 11 almost 5 years after the death of Kartar Kaur and more than 6 years after the order of the Collector declaring the land as surplus had become final, has resulted in grave injustice besides defeating the object of the legislation which was envisaged as a socially beneficial piece of legislation. Thus we hold that the application for redetermination filed by Daya Singh under sub-section (5) of Section 11 of the Act on 21-6-1985 was liable to be dismissed on the ground of inordinate delay and the Collector was wrong in reopening the issue declaring the land as not surplus in the hands of Daya Singh and Kartar Kaur.

11. The above reasoning is in consonance with the provision in sub-section (7) of Section 11 of



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the Act. Sub- section (7) uses the words "where succession has opened after the surplus area or any part thereof has been determined by the Collector ...". The words "determined by the Collector" would mean that the order of the Collector has attained finality. The provisions regarding appeals, etc. contained in Sections 80-82 of the Punjab Tenancy Act, 1887, as made applicable to proceedings under the Punjab Land Reforms Act, 1972, show that the maximum period of limitation in case of appeal or review is ninety days. The appeal against the final order of the Collector dated 30-9-1976 whereby 3.12 hectares of land had been declared as surplus was dismissed on 27-3-1979. The order was allowed to become final as it was not challenged any further. Thus the determination by the Collector became final on 27-3-1979. The same could not be reopened after a lapse of more than 6 years by order dated 23-7-1985. The subsequent proceedings before the Revenue Authorities did not lie. The order dated 23-7-1985 is non est. All the subsequent proceedings therefore fall through. The issue could not have been reopened." (emphasis supplied)

58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in *Basawaraj v. Land*



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Acquisition Officer, (2013) 14 SCC 81, has held:

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC



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1336], Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] , Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and



circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." (emphasis supplied)

59. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in *Postmaster General v. Living Media India Ltd.*, (2012) 3 SCC 563 [*"Postmaster General"*], as follows:

"27. 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



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a wing of the Government is a party before us.

28. 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 bona fides, 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.

29. 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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.



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62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 as follows:

"12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is



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called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of s. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14."

6. In reply to the arguments of the learned counsel appearing for the 1st respondent, the learned Central Government Standing Counsel appearing for the petitioner relied on the Judgment of Madurai Bench of this Court reported in 2007 (6) MLJ 570, Judgment of this Court reported in 2014 (1) MWN (Civil) 337, [Oil & Natural Gas Co. Ltd., Caverry Asset Neravy Vs. Brick Steel Enterprises, Suramangalam & Another] and Judgment of the Hon'ble Apex Court reported in 2002 (5) SCC 510 and contended that the contention of the learned counsel appearing for the 1st respondent applies only to proceedings under Arbitration Act before Arbitrator and not to appeal filed to restore the appeal. The provisions of the Code of Civil Procedure is applicable to the proceedings filed challenging the award of Arbitrator and relied on paragraph Nos. 30 & 31 of 2007 (6) MLJ 570, wherein the Madurai Bench of this Court held as follows:

"30. The extent of judicial intervention or the restriction placed on the Court is confined only to the proceedings pending before the Arbitral Tribunal to the extent so provided under the Act. In other words, the provisions of the Civil Procedure Code, may not be applicable to the proceedings pending before the Arbitral Tribunal except so provided in part-I of the Act. The jurisdiction of a Civil Court is determinable by application of the provisions of Civil Procedure Code. Once the matter goes out of the hands of the Arbitral Tribunal to the Civil Court, the provisions, contained in the Civil Procedure Code are applicable to all the proceedings, i.e., orders or appeals arising out of provisions of Arbitration Act. Since the proceedings before the Court



6(a). The learned Central Government Standing Counsel appearing for the petitioner further contended that in paragraph Nos.23 & 42 of the judgment of the Hon'ble Apex Court reported in (2021) 6 SCC 460, relied on by the counsel appearing for the 1st respondent itself, the Hon'ble Apex Court held that the application under Section 5 of Limitation Act is not excluded in the scheme of Commercial Courts Act and prayed for allowing the application.

7. Heard the learned Central Government Standing Counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

8. The issue to be decided in the present petition is whether provisions of Code of Civil Procedure as well as Limitation Act are applicable to restore the appeal filed by the petitioner challenging the Arbitration Original Petition and condone the delay in filing the petition.

9. It is the case of the learned counsel appearing for the 1st respondent that Arbitration and Conciliation Act is self contained Code and enacted for speedy disposal of arbitration proceedings. As per Section 5 of Arbitration and Conciliation Act 1996, applicability of provisions of other Acts excluded unless specifically provided in the Arbitration Act. The said contention is applicable only to the proceedings before the Arbitrator. Once award is passed and parties initiate proceedings challenging the proceedings of Arbitrator, provisions of the Code of Civil Procedure is applicable to the said proceedings. In the judgment reported in 2007 (6) MLJ 570, the Madurai Bench of this Court has considered the judgment of the Hon'ble Apex Court reported in AIR 2002 SC 2308, [ITI Ltd. Vs. Siemens Public Communications Networks Ltd.] and (2006) 1 MLJ 657, [Om Sakthi Renerigies Ltd. Vs. Megatech Control Ltd.] and in paragraph Nos.30 & 31 held that Court defined under Section 2(e) of the Arbitration Act can exercise the power conferred under the provisions of the Code of Civil Procedure. The relevant portion of the said judgment has been extracted hereunder for easier reference:

" ... 30. Judicial intervention is permissible in any matters arising out of Sections 9, 27, 34, 36 and 37 in part-I of the Act and provisions of the Code of Civil Procedure are applicable to such proceedings."

9(a). This Court has extracted paragraph Nos.28 & 29 of the judgment reported in 2007 (6) MLJ 570. This judgment was followed again by this Court in the judgment reported in 2014



(1) MWN (Civil) 337. In paragraph No.20 of the said judgment extracted above, this Court has held that Court defined under Section 2(e) of the Arbitration and Conciliation Act exercises the power of Civil Court and powers of Civil Court are not curtailed by non-obstante clause in Section 5 of the Act, except so provided in Part-I of the Act. Further, in the judgment of the Hon'ble Apex Court reported in (2017) 2 SCC 37, relied on by the learned counsel appearing for the 1st respondent, the Hon'ble Apex Court has held in paragraph Nos.10, 27 & 28 as extracted above. Further, in paragraph No.27, the Hon'ble Apex Court has held as follows:

" ... 27. ... Thus, the application of CPC is not conceived of and, therefore, as a natural corollary, the cross-objection cannot be entertained. Though we express our view in the present manner, the judgment rendered in ITI Ltd. is a binding precedent."

9(b). After holding so, the Hon'ble Apex Court referred the matter to a Larger Bench for re-consideration of the view expressed in the judgment reported in (2002) 5 SCC 510, [ITI Ltd. Vs. Siemens Public Communications Networks Ltd.]. In view of paragraph No.27 of the judgment of the Hon'ble Apex Court reported in (2017) 2 SCC 37 and judgment of this Court reported in 2007 (6) MLJ 570 and 2014 (1) MWN (Civil) 337 relied on by the learned counsel for petitioner, the application filed by the petitioner to restore the C.M.A.No.99 of 2010 as well as to condone the delay are maintainable. The petitioner has given valid and sufficient reason to condone the delay.

10.Considering the above materials, the delay of 565 days in filing the petition to set aside the order of dismissal dated 26.11.2019 passed in C.M.A.No.99 of 2010 is condoned and C.M.P.No.18726 of 2021 is ordered.

11.Registry is directed to number the application filed to set aside the order of dismissal dated 26.11.2019 made in C.M.A.No.99 of 2010, if it is otherwise in order.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

krk



To:

1. The District Judge,
Nilgiris,
Udhagamandalam.

WEB COPY

2. Shri Krishnakumar,
Chief Engineer & Sole Arbitrator,
Penal of Arbitrators Pune,
CWE KIRKEE Complex,
Range Hills Road, Krkeepport,
Pune - 411 003.

Copy to:

The Section Officer,
AE Section,
High Court, Madras.

+1cc to Mr.A.R.Sakthivel, Advocate, S.R.No.465

C.M.P.No.18726 of 2021
in
C.M.A.No.99 of 2010

SSD(CO)
SU(24/02/2022)