



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S. ANANTHI

CRP(MD).No. 482 of 2022

WEB COPY

M/s. Vaam Industries,
rep. by its proprietrix
K.Reji

.. Petitioner

Vs.

1. National Insurance Company Ltd.,
Nagercoil Branch,
rep. by its Branch Manager

2.National Insurance Company Ltd.,
Divisional Office,
Nagercoil,
rep. by its Divisional Manager.

.. Respondents

Prayer: This Civil Revision Petition is filed under Section 115 CPC against the order dated 26.11.2021 in E.A.No.4 of 2019 in E.P.No.51 of 2018 in Arbitration Case No.1 of 2015, on the file of the Principal District Judge, Kanniyakumari.

For Petitioner : Mr. M. Suresh
For respondent : Mr. S. Srinivasa Ragavan

ORDER

The revision petitioner / claimant filed this revision to set aside the order, dated 26.11.2021 made in E.A.No.4 of 2019 in E.P.No.51 of 2018 in Arbitration Case No.1 of 2015, on the file of the Principal District Judge, Kanniyakumari.

2. Heard the learned counsels appearing on either side and perused the materials available on record.

3. The said E.P.No.51 of 2018 was filed by the petitioner to pass an order of arrest against the respondent to realize the E.P amount of Rs.19,85,407/-, which was dismissed for default on 16.03.2019. To restore the E.P, the revision petitioner has filed E.A.No.4 of 2019 without delay condonation petition, after a lapse of 30 days and the same was dismissed. But, as per the Judgment of this Court, ***dated 29.07.2015 made in CRP(NPD).(MD).No.184 of 2013 in the case of (Tmt. V. Prema and others Vs. Tmt. Nirmala Devi @ Thayar and another)***, Section 5 of the Limitation Act is not



applicable to the application filed for setting aside the ex parte order under Rule 106 of Order 21 of Code of Civil Procedure. The relevant portion of the said order reads as follows:

"9. The Supreme Court in N.Balakrishnan V. M. Krishnamurthy (1998(7) SCC 123) observed that the superior Court would be free to consider the cause shown for the delay afresh and to come to its own finding.

"9. It is axiomatic that condonation of delay is matter of discretion of the Court, Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes, delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less is regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the Superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower Court."

4. So, the petitioner is directed to file a petition under Section 5 of the Limitation Act and the Executing Court is directed to decide the matter on merits, after giving a sufficient opportunity to the petitioner.

5. With the above observation, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Principal District Judge, Kanniyakumari.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-17639[F] dated 08/04/2022)

+2 CC to M/s.M. SURESH, Advocate (SR-17274[F] dated 07/04/2022)

CRP (MD) .No. 482 of 2022

07.04.2022

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