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Application No.376 of 2023

Application No.376 of 2023
in Arb.O.P.DR.No.16002 of 2022

KRISHNAN RAMASAMY, J.

The present Application has been filed to set aside the order dated 21.12.2022 passed by the learned Master in A.No.4581 of 2022 in Arb.O.P.DR.No.16002 of 2022.

2. The learned Master, by his order dated 21.12.2022, observed that under Section 34(3) of the Arbitration and Conciliation Act, an application cannot be filed after 90 days and if sufficient cause is shown, it can be received within a further period of 30 days and not thereafter. The learned Master, in paragraph No.13 of the order, has passed the order as under:-

"13.When the Original Petition has been taken under Section 24 of Arbitration and Conciliation Act, 1996, the applicant should have been vigilant in representing the same, after its return. As stated in the above said judgments, the applicant cannot be permitted to come leisurely before the Court under Section 34 of Arbitration and Conciliation Act, 1996. When there is a



special statute in which there is a special provision of limitation, the rule is to follow the same. It cannot be diluted by colouring the delay in preferring appeal as delay in representation. This Court do not find any merit in the application filed by the applicant. Therefore, this application is dismissed."

3. Mr.N.L.Rajah, learned Senior Counsel appearing for the applicant submitted that this is the subject matter between the applicant and the Court and the respondent has nothing to do with the same.

4. Considering the submission made by the learned Senior Counsel and in view of the law laid down by this Court and the Hon'ble Apex Court in the case of ***Northern Railway vs. Pioneer Publicity Corporation Private Limited*** reported in ***(2017) 11 Supreme Court Cases 234***, this Court is of the view that the Master has misconstrued the application, where Section 34(3) of the Act is not applicable. In the present case, there is a delay of 137 days in representation. Admittedly, the applicant has paid the entire Court fee and for the purpose of technical reasons, it was returned. If the Court is convinced for condoning the delay



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in representation, it can be condoned. The findings of the learned Master that it cannot be diluted by colouring the delay in preferring the appeal as delay in representation is not acceptable.

5.The condonation of delay in re-presentation is not within the scope of Section 34(3) of the Act. The period mentioned in Section 34(3) of the Act for challenging the award would not apply for the re-presentation of the Original Petition, which was already filed within the period of limitation along with full Court fee. Further, learned Master failed to pass orders with regard to the reasons for condonation of delay provided by the petitioner. The Hon'ble Apex Court in the above referred case has categorically held that Section 34(3) of the Act has no application in re-filing the petition but only applies to the initial filing of the petition under Section 34 of the Act.

6.Considering the submissions made by the learned counsel appearing for the applicant and being satisfied with the averments made in the affidavit filed in support of the application, this Court feels that the delay needs to be condoned and hence, inclined to allow the present application.



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7. Accordingly, the order passed in A.No.4581 of 2022 in Arb.O.P.DR.No.16002 of 2022 dated 21.12.2022 is set aside and this Application is allowed.

The Registry is directed to number the Original Petition.

06.02.2023

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