



A.Nos.592 & 594 of 2023 & 5564 & 5567 of 2022

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& 5564 & 5567 of 2022

& Arb.O.P.(Com.Div.)Sr.No.23590 of 2022

KRISHNAN RAMASAMY, J.,

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These Applications are filed to set aside the order of the learned Master in A.Nos.5564 and 5567 of 2022 in Arb.O.P.(Com.Div.)D.No.23590 of 2022 dated 20.12.2022.

2. The applications in A.Nos.5564 and 5567 of 2022 in Arb.O.P.(Com.Div.)D.No.23590 of 2022 were filed to condone the delay of 201 days in representing the original petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) and to pay the deficit Court fee.

3. The learned counsel for the applicant submitted that at the first representation of the petition, the Registry returned the petition due to delay in payment of Court fee and they have paid the Court fee prior to the second representation of the petition. However, the Registry has again returned the same for compliance/rectifying the defects.



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4. However, the learned Master dismissed the said applications by stating that when there is a delay, it cannot be diluted by colouring the delay in preferring the appeal as delay in representation.

5. This Court has allowed the similar application in A.No.216 of 2023 in Arb.O.P.(Com.Div.)Sr.No.82894 of 2022 stating that it is a well settled law that in case where the whole or part of court fees has not been paid, even after filing the suit, the Court may, in its discretion, allow the person to pay the insufficient Court fee at any point of time.

6. The learned Master dismissed the application stating that as if Section 34(3) of the Act would apply for the representation as well. However, this Court feels that as far as Section 34(3) of the Act is concerned, it would apply only for the purpose of presentation of the original petition and if the original petition is returned for any default, the limitation provided in the Section 34(3) of the Act would not apply. Therefore, the reason assigned by the learned Master is not acceptable. Further if the Court finds that there is sufficient reasons for delay in representation, it can condone. The Court cannot dismiss the petition to condone the delay in



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representation, under the pretext that they have delayed purposely, only to delay the OP proceedings, without assigning any reason to reject the reasons provided for delay in representation.

7. Therefore, being satisfied with the reasons stated by the applicant in the affidavit filed in support of the application, this Application is allowed and the order dated 20.12.2022 passed by the learned Master in Application Nos.5564 and 5567 of 2022 is set aside, thereby, the delay of 201 days in representing the above Arb.O.P.(Com.Div.) Diary No.23590 of 2022 is condoned.

06.02.2023

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