Application No.889 of 2023

KRISHNAN RAMASAMY, J.

This Application has been filed by the applicant praying to set aside the order passed by the learned Master in A.No.5633 of 2022 dated 22.12.2022 in Arb.O.P.(SR) No.64818 of 2022.

2. The learned counsel for the applicant submitted that the applicant has presented the above Arb.O.P.(SR) No.64818 of 2022 before this Court on 24.06.2022 within the period of limitation, however, the same was returned due to certain defects. Hence, the said O.P was re-presented on 26.07.2022, but, the same was returned once again on 08.08.2022, for certain compliance. Thereafter, on 29.11.2022, the applicant has re-presented the above Arb.O.P.(SR) No.64818 of 2022 along with Application No.5633 of 2022, for condoning the delay of 102 days in representing the said O.P. The applicant has also paid the entire Court fee. He further submitted that it was clearly stated in the affidavit filed in support of Application No.5633 of 2022 that delay of 102 days has occurred only because of the reason that the applicant took some time to trace out the original award and the voluminous documents, however, without considering the same, the learned Master vide order dated 22.12.2022, has

dismissed the said application by observing as follows:

"7. At this stage, this Court bring its attention to the judgment rendered by our Hon'ble High Court in Commercial Division reported in 2019 SCC Online Mad. 5586

(Before The Hon'ble Mr.Justice M.Sundar)

The relevant extracted portion is hereunder

31. Though law is well settled that when a special statute prescribes a special time frame, Section 5 of the Limitation Act, 1963 does not apply, this Court has reminded itself that sub-section (3) and proviso thereto to Section 34 of A & C Act which fall in this category should also be seen in the perspective of aforesaid pillars of ADR Mechanism. If parties who have opted for ADR Mechanism are allowed to leisurely come before this Court under Section 34, it will lead to a situation where salutary principles and sublime philosophies underlying the ADR Mechanism (which have been described as pillars on which edifice of law governing ADR Mechanism is built) can be easily neutralized, nullified and defeated by resorting to procrastination. This Court deems it appropriate to set out that this Court has reminded itself about this aspect of the matter also.

32. If the instant petition is held to be maintainable, besides being impermissible owing to Section 34(3) and proviso thereto and the overriding Section 149 of CPC (though not invoked), it will also create an avenue and may open the floodgates for litigants to approach this Court leisurely and defeat the objectives of ADR Mechanism. Therefore, this Court is convinced that the instant OP is clearly not maintainable. In other words, entertaining instant OP will pave the way for litigants, who intend to procrastinate, to merely file some sheets of paper without proper presentation, i.e., *without proper court fee or impugned order and thereafter, endlessly extend the limitation prescribed. This will open floodgates which will dilute and wash away the principle underlying ADR Mechanism. Though this Court has no hesitation in holding that O.P.Dairy No.18377 of 2018 is not maintainable owing to plain operation of provisions of law itself, these aspects/principles touching upon 'ADR Mechanism' have been alluded to only as additional phenomena.*

In the light of all that have been set out supra, instant OP is clearly barred by limitation and the same is dismissed as not maintainable. No costs.

8. When the original petition has been taken under Section 34 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 judgment, 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."

Therefore, the learned counsel for applicant prayed this Court to set aside the order passed by the learned Master and to condone the delay of 102 days in representing the above Arb.O.P.(SR) No.64818 of 2022.

3. At this juncture, it is pertinent to state that the condonation of delay in representation is not within the scope of Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act'). The period mentioned in Section 34(3) of the Act for challenging the award would not apply for the representation of the original petition, which was already filed within the period of limitation along with full Court fee. The Hon'ble Supreme Court in the case of ***Northern Railway Vs. M/s.Pioneer Publicity Corporation Pvt. Ltd. (Civil Appeal No.10340 of 2016 dated 24.10.2016)*** reported in ***(2017) 11 SCC 234***, 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. The relevant portion of the order passed by the Hon'ble Apex Court in the said case is usefully extracted hereunder:

> *"4. We find that said Section 34(3) has no application in re-filing the petitioner but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of extensions, it would amount to*

re-filing."

4. So far as this case is concerned, the reasons stated by the applicant for condoning the delay of 102 days in representing Arb.O.P.(SR) No.64818 of 2022 are sufficient and convincing. However, the learned Master was not satisfied with the reasons adduced by the applicant. The learned Master misconstrued that Section 34(3) of the Act would apply for re-presentation of the original petition and hence, dismissed the Application No.5633 of 2022 on the following grounds:

(i) Section 34 Application cannot be filed after a lapse of three months (90 days) and if any sufficient reason is given, the same can be received within a further period of 30 days, but, not thereafter. The said provision of the Act cannot be overruled by colouring the delay as a delay in representation.

(ii) The reasons stated by the applicant for the delay of 102 days are unacceptable.

5. It is made clear that Section 34(3) of the Act is not applicable to

the present case because the applicant has presented the O.P, well within the period of limitation. That apart, the applicant has also paid the entire Court fee.

6. Considering the submissions made by the learned counsel for applicant and in the light of the dictum laid down by the Hon'ble Apex Court in the case of ***Northern Railway Vs. M/s.Pioneer Publicity Corporation Pvt. Ltd. (Civil Appeal No.10340 of 2016 dated 24.10.2016)*** reported in ***(2017) 11 SCC 234,*** this Court is inclined to allow this Application. Accordingly, this Application is allowed and the order dated 22.12.2022 passed by the learned Master in A.No.5633 of 2022 is set aside, thereby, the delay of 102 days in representing the Arb.O.P.(SR) No.64818 of 2022 is condoned.

15.02.2023

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Note: Registry is directed to number the Arb.O.P.(SR) No.64818 of 2022, if it is otherwise in order.

KRISHNAN RAMASAMY, J.

mrr

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