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A.No.1541 of 2023
in
Arb.O.P.No.62812 of 2022

Application No.1541 of 2023
in Arb.O.P.(SR).No.62812 of 2022

KRISHNAN RAMASAMY, J.

This application has been filed to condone the delay of 103 days in representing Arb.O.P.(SR).No.62812 of 2022.

2. Heard the learned counsel for the applicant and perused the materials available on record. None appeared on behalf of the respondents.

3. The reason assigned by the learned counsel for the applicant is that the applicant is 70 years old senior citizen and due to the age factor of the applicant, he is unable to get proper instructions from time to time. To rectify the defects the Registry has returned the main O.P. Hence, there is a delay of 103 days in re-presentation. However, the learned Master has rejected the said application and thereby, refused to condone the delay, citing that Section 34(3) of the Arbitration and Conciliation Act, 1996, only includes the delay petition supposed to have filed to condone the delay.



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4. The learned Master refused to condone the delay holding that the delay in representation would also falls within the scope of Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”). However, in number of judgments including the judgments of this Court as well as the Hon'ble Supreme Court, the delay in representation will not be included while calculating 3 months under the provisions of Section 34(3) of the Act. However, the said provision will apply only for the purpose of presentation. Therefore, in the present case, the learned Master has to consider only as to whether the reason provided for delay is satisfiable or not, but without looking into that aspect, the learned Master had rejected the application holding that the present delay is beyond a period of limitation of filing the original petition as mentioned in Section 34(4) of the Act.

5. In number of cases, this Court as well as the Hon'ble Supreme Court held that the limitation mentioned in Section 34(3) of the Act is only for the presentation of the original petition and delay in representation will not fall within the scope of Section 34(3) of the Act.



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6. When such being the case, considering the reasons provided in the affidavit filed in support of the application for the delay in representation of the original petition, this Court is satisfied with the same and is inclined to condone the delay.

7. Accordingly, the delay of 103 days in representing the original petition is condoned and the order passed by the learned Master is set aside.

03.04.2023

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