A.Nos.2321, 2323, 2324, 2325, 2329, 2331, 2332 and 2333 of 2023

in

Arb.OP D.Nos.35443, 48317, 48318 and 48320 of 2022

13.07.2023

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Common Order

There are two applications in each OPD which have been taken in which one is to condone the delay in representation of Section 34 application and the another is to condone the delay in paying the deficit court fee.

Application No.2321 of 2023 is taken to condone the delay of 334 days in representation and A.No.2323 of 2023 is taken to condone the delay of 348 days in paying deficit court fee of Rs.67,500/- in OPD.No.35443 of 2022.

Application A.No.2324 of 2023 is taken to condone the delay of 274 days in representation and A.No.2325 of 2023 is taken to condone the delay of 288 days in paying deficit court fee of Rs.98,100/- in OPD.No.48317 of 2022.

Application A.No.2329 of 2023 is taken to condone the delay of 274 days in representation and A.No.2331 of 2023 is taken to condone the delay of 294 days in paying deficit court fee of Rs.99,600/- in OPD.No.48318 of 2022.

Application A.No.2332 of 2023 is taken to condone the delay of 274 days in representation and A.No.2333 of 2023 is taken to condone the delay of 288 days in paying deficit court fee of Rs.98,100/- in OPD.No.48320 of 2022.

The reasons stated for the delay in the representations are one and the same that the counsel who dealt the case before the Arbitrator had gone to his native place and due to the same the applicant was unable to get back the case papers and there was a huge miscommunication between his office and the present counsel's office and due to the same delay was caused.

Before going into the merits of these applications it is useful to look into the relevant provision in "The Arbitration and Conciliation Act 1996".

It is needless to say that the Arbitration and conciliation Act is a special Statue which contains limitation period in itself to prefer original petition to set aside the arbitral award. Section 34(3) of the "Arbitration and Conciliation Act" runs as follows:

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that requested had been disposed of by the arbitral Tribunal:

PROVIDED that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

From the provisions of the Act itself it is clear that Section 34 application to set aside the arbitral award cannot be filed after 3 months and if sufficient cause is shown it can be received within a further period of 30 days and not thereafter.

In the case in our hand, these original petitions have been filed within time, but without required court fees. Only a nominal court fee is paid. Therefore it is clear that the applicant at the time of filing the original petition itself had the knowledge that the original petition would be returned.

The applicant did not take any application under Section 149 of Civil Procedure Code to extend the time for payment of defecit court fee by the order of the Court. The applicant filed the papers with the knowledge that it would be returned. Mere filing of papers before the Court without required court fee is not proper presentation and it will not stop the running of limitation period.

Whenever any papers are returned by the court for not paying the court fees, it shall be complied and represented within the time granted by the court or within the time which is stipulated by the law whichever is maximum. The applicant cannot be permitted to come leisurely and represent the papers according to his whims and fancies. The representation does not amount to refiling but only a fresh filing and the same would not save the limitation period.

The object of the provision itself is to control the period to file the petition under Section 34 of the Arbitration and Conciliation Act within time and not thereafter. When the parties opted for ADR mechanism, they should have been vigilant in following the rule of limitation in the Arbitration and concialiation Act 1996. The petitioner cannot be permitted to file Section 34 petition without proper Court fee and also without getting permission from the court allowed it to be returned and keep the returned case papers in his custody and represent the same according to his whims and fancies. If this kind of delay is condoned mechanically treating the same as delay in representation, definitely it will ruin the ADR mechanism. The applicant cannot be permitted to colour the delay in filing as the delay in representaion by his legal brain.

The reasons stated for the delay in representaion is that the erstwhile counsel had gone to his native place and the applicant was not able to contact him, so that delay occurred. The applicant is the Government undertaking Company, Southern Railway. The reason that they could not contact their counsel is unbelievable. When the delay is small this kind of explanations can be accepted. But for a huge delay of nearly 300 days there shall be satisfactory and credible explanation.

When the parties opted ADR mechanisms, they should have been vigilant. The applicant knowing very well that the applications would be returned for deficit court fee. Either the counsel or the applicant should have been vigilant in taking the return and for the representaion. The litigant should be always in contact with his counsel and vice versa. When the applicant and the counsel have the knowledge about the deficit court fee and return, the vague allegation they could not contact each other for a long time is not a valid and justifiable reason.

This court is not satisfied with the reason explained for the delay. Therefore all these applications are dismissed.

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2329, 2331, 2332, 2333 of 2023

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