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A. Nos. 3370 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2023

Pronounced on : 21.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**A. Nos.3370 and 3371 of 2023
in
Arb. O.P. Dr. No.56125 of 2022**

Vikranthi Foundations

Rep. by its Partner

Mr.Ajeeth

...

Petitioner in both
applications

vs.

Orient Builders

Rep. by its Managing Partner

Mr.Jose Thomas

...

Respondent in both
applications

Prayer in A. No.3370 of 2023 : Application filed under Order XIV rule 8 of the Original Side Rules R/w Section 5 of the Limitation Act to condone the delay of 54 days in filing the application D. No.57701 of 2023 in Arbitration Original Petition (Commercial Division) D. No.56125 of 2022.

Prayer in A. No.3371 of 2023 : Application filed under Order XIV rule 8 of the Original Side Rules R/w Section 5 of the Limitation Act to condone the delay of 54 days in filing the application D. No.57712 of



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2023 in Arbitration Original Petition (Commercial Division) D.
No.56125 of 2022.

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For petitioner in both applications : Mr.R. Subramanian
For respondent in both applications : Ms.P.G. Aishwariya

COMMON ORDER

The issue that arises for consideration in this matter is whether the learned Master was right in dismissing the applications filed by the applicant a) seeking to condone the delay of 191 days in representing the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996; seeking to condone the delay of 211 days in paying the Deficit Court fee of Rs.1,00,000/- and b) as to whether the rigours of Section 34(3) of the Arbitration and Conciliation Act, 1996, which prescribes the limitation period for filing Section 34 applications is also applicable to condone delay applications filed to condone the delay in re-filing.

2. Apart from the above issues, this Court will also have to decide as to whether sufficient cause has been shown by the applicant for condoning the delay of 54 days in filing the applications aggrieved by the common order of the learned Master, dated 21.02.2023, dismissing



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the applications filed to condone the delay in re-presenting the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 as well as filed to condone the delay of 211 days in paying the deficit court fee of Rs.1,00,000/-.

3. For deciding the case on hand, the following dates and events are just and necessary to be noted :-

S. No.	Date	Event
<i>i</i>	<i>13.10.2021</i>	<i>Learned Sole Arbitrator passes Arbitral Award in Arbitration Case (MHC) No.2 of 2019, A.F. No.88 of 2019</i>
<i>ii</i>	<i>13.12.2021</i>	<i>The Applicant herein receives the above said Arbitral Award along with the corrected copy (corrigendum) dated 20.10.2021.</i>
<i>iii</i>	<i>06.06.2022</i>	<i>Arb. O.P. (D) No.56125 of 2022 was filed by the Applicant herein u/s. 34(3) of the Arbitration and Conciliation Act, 1996 (without paying the entire Court Fee, and without filing any Application under S. 149 of the Code of Civil Procedure for making up deficiency of Court Fee) before this Hon'ble Court to set aside the Arbitral Award dated 13.10.2022</i>
<i>iv</i>	<i>13.06.2022</i>	<i>The above stated Arb. O.P. (D) No.56125 of 2022 was returned by the Registry for certain corrections including the non-payment of the entire Court Fee.</i>
<i>v</i>	<i>30.06.2022</i>	<i>The outer limit for filing an Application to set aside an Arbitral Award (3 months with 30 days of condonable delay) as provided by Section 34(3) of the Arbitration and Conciliation Act, 1996, expires.</i>
<i>vi</i>	<i>19.01.2023</i>	<i>The Applicant herein re-files /re-presents the returned Arb. O.P. (D) No.56125 of 2022, with two Applications (filed on 20.01.2023) under Order XIV, R. 10(1) of the Original side Rules of the Madras High Court, 1994(hereinafter referred to as the OS rules)- a) A. No.507 of 2023 in Arb. O.P. (D) No.56125 of 2022 -</i>



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S. No.	Date	Event
		<i>To condone the delay of 191 days in re-presenting Arb. O.P. (D) No.56125 of 2022 b) A. No.509 of 2023 in Arb. O.P. (D) No.56125 of 2022 - To condone the delay of 211 days in paying the deficit court fee of Rs.1,00,000/-</i>
vii	21.02.2023	<i>The learned Master dismisses the above stated applications as devoid of merits.</i>
viii	24.04.2023	<i>Appeals (SR) No.57701 and 57712 of 2023 are filed by the Applicant herein before this Hon'ble Court under Order XIV, R.12 of the OS Rules, against the above stated Order of the Master dated 21.02.2023.</i>
ix	07.06.2023	<i>The Applicant herein files A. Nos.3370 and 3371 of 2023 in the (SR) No.57701 and 57712 of 2023 in Arb. O.P. (D) No.56125 of 2022 before this Hon'ble Court under Order XIV, R.8 of the OS Rules, for condoning the delay of 54 days in filing the above stated Appeals.</i>

4. The learned Master dismissed Application No.507 of 2023 in Arb. O.P. Diary No.56125 of 2022 seeking to condone the delay of 191 days in representing Arb. O.P. (Diary) No.56125 of 2022 as well as Application No.509 of 2023 in Arb. O.P. D. No.56125 of 2022 seeking to condone the delay of 211 days in paying the deficit Court fee of Rs.1,00,000/- by a common order dated 21.02.2023 by giving the following reasons :-

a) At the time of filing the original petition, no court fee was paid by the applicant along with Section 34 petition.

b) After getting the papers returned from the Registry on



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account of non payment of court fees and other defects, the applicant re-presented the same according to his whims and fancies.

c) The Arbitration and Conciliation Act, 1996 is a special statute which contains limitation period in itself to prefer original petition under Section 34 of the Arbitration and Conciliation Act, 1996. From the provisions of the Act itself, it is clear that Section 34 of the Arbitration and Conciliation Act, 1996 cannot be filed after a period of 90 days and if sufficient cause is shown, it can be received within a further period of 30 days and not thereafter.

d) The applicant has not paid the Court fees for filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 and has also not filed a petition under Section 149 of the Code of Civil Procedure seeking extension of time for payment of deficit court fees. The decision of a learned Single Judge of this Court in the case of ***General Manager and others v. Veeyar Engineers and Contractors*** reported in ***2019 SCC***



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Online Mad. 5586 was followed. The petition filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996 is not a proper presentation as mere filing of papers before this Court is not proper presentation and will not stop the running of the limitation period.

e) The re-presentation of the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the applicant does not amount to re-filing but amounts to a fresh filing, since the applicant did not pay the Court fees while filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 for the first time.

f) When the original petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, the applicant should have been vigilant in re-presenting the same after its return. 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 the appeal as delay in representation.



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g) The object of the provision itself is to control the period to file the petition under Section 34 of the Arbitration and Conciliation Act, 1996 within 120 days and not thereafter. If the petition filed under Section 34 of the Arbitration and Conciliation Act was returned for defects, it is the duty of the petitioner to represent the same within the time fixed by the Court or 120 days as stipulated in the Act, whichever is maximum. The petitioner cannot be permitted to keep the case papers in his custody and re-present the same according to his whims and fancies.

h) The reason given by the applicant for the delay is as usual and routine that the returned papers were misplaced. When there is a delay in filing or representation, the reason for the delay should be explained to the satisfaction of the Court.

5. Aggrieved by the findings of the learned Master, the petitioner has filed the applications with a delay of 54 days. These applications have been filed to condone the delay of 54 days in filing applications aggrieved by the common order of the learned Master dated 21.02.2023.



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6. The learned counsel for the applicant /petitioner drew the attention of this Court to the following authorities :-

a) An order passed by the Hon'ble Supreme Court, dated 24.10.2016 in the case of ***Northern Railway vs. M/s.Pioneer Publicity Corp. Pvt. Ltd. in Civil Appeal No.10340 of 2016.***

b) A Judgment of the Hon'ble Supreme Court, dated 31.01.2023 in the case of ***Ajay Dabra vs. Pyare Ram & others in SLP (C) No.15793 of 2019.***

7. Relying upon the aforesaid decisions, the learned counsel for the applicant would submit that Section 34(3) of the Arbitration and Conciliation Act, 1996 has no applicability for re-filing but only applies to the initial filing under Section 34 of the Arbitration and Conciliation Act, 1996.

8. He would also submit that the learned Master has erroneously relied upon a decision rendered by a learned Single Judge of this Court in the case of ***General Manager and others vs. Veeyar Engineers and***



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Contractors reported in 2019 SCC Online Mad 5586, which has not considered the decision rendered by the Hon'ble Supreme Court in the case of **Northern Railway's** case referred to supra and therefore, the said decision according to him is *per in curium*. Hence, he would submit that the applications filed to condone the delay of 191 days in re-presenting the petition filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996 is maintainable. He would also submit that the delay in payment of the Court fees by the applicant is neither wilful nor wanton and having shown sufficient cause, the learned Master ought to have allowed the said application also.

9. He would also submit that the Division Bench of this Court in the decision reported in **Waaree Energies Ltd., v. Sahasradhara Energy Pvt. Ltd. reported in 2021 SCC Online Mad 5086** relied upon by the learned counsel for the respondent has also not considered the decision of the Hon'ble Supreme Court in **Northern Railway vs. M/s.Pioneer Publicity Corp. Pvt. Ltd. in Civil Appeal No.10340 of 2016** and therefore according to him, the said decision is also *per in curium*.

10. Per contra, the learned counsel for the respondent would rely upon the following authorities. :



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a) K. Natarajan vs. P.K. Rajasekaran reported in 2003 3 LW 803

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b) Dr. R. Krishnamurthy v. Dr. R. Venkitapathy reported in O.S.A.

No.220, 221, 254 and 277 of 2017.

c) R. Sathyamurthy V.R. Krishnamurthy reported SLP (C) 16843-46 of 2018

d) Simplex Infrastructure Ltd. v. Union of India reported in 2019 2 SCC 455.

e) General Manager and others v. Veeyar Engineers and Contractors reported in 2019 SCC Online Mad 5586.

f) Waaree Energies Ltd., v. Sahasradhara Energy Pvt. Ltd. reported in 2021 SCC Online Mad 5086,

in support of her contentions that the presentation of the petition by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 is not a proper presentation as they have filed the petition without payment of any Court fee and therefore, it has to be held that the petition has been filed beyond the limitation period fixed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

11. Discussion :-

Admittedly, the O.P. filed under Section 34 of the Arbitration and



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Conciliation Act 1996, was filed by the petitioner without payment of any Court fees on 06.06.2022, though within the limitation period of the maximum of 120 days as prescribed under Section 34 of the Arbitration and Conciliation Act, 1996. Admittedly, at the time of filing of the petition under Section 34 of the Arbitration and Conciliation Act, 1996, no extension of time was sought for by the applicant under Section 149 of the Code of Civil Procedure for payment of the Court fees. The application under Section 149 of the Code of Civil Procedure was filed by the applicant only beyond the period of limitation. The applicant has also not complied with the returns raised by the Registry more particularly the non payment of court fees within the limitation period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

12. In an identical issue involving the same set of facts, a learned Single Judge of this Court in the case of ***General Manager and others vs. Veeyar Engineers and Contractors reported in 2019 SCC Online Mad 5586*** and the Division Bench of this Court in the case of ***Waaree Energies Limited, vs. Sahasradhara Energy Pvt. Ltd. reported in 2021***



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SCC Online Mad 5086 have held that if there is no proper presentation of a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 within the limitation period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996, either on account of non payment of court fees or payment of deficit court fees, condoning the delay in representation beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 is not permissible.

13. The learned counsel for the applicant had relied upon two decisions of the Hon'ble Supreme Court in support of his submissions :-

a) One is the decision rendered in ***Northern Railway vs. M/s.Pioneer Publicity Corp. Pvt. Ltd.*** In the said decision, the Hon'ble Supreme Court has held that Section 34(3) of the Arbitration and Conciliation Act 1996, has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Arbitration and Conciliation Act, 1996.

14. The relevant portions of the order which was relied upon by the learned counsel for the petitioner are extracted hereunder :-



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"Eventually, the appellant re-filed the matter on 21.3.2013. the explanation given by the appellant is that the amount of court fees to the extent of Rs.8,94,000/- was to be arranged and that took some time. The appellant is the Northern Railway and while it difficult to condone such inefficiency which seems to be a persistent reality with the organisation, such as the Northern Railway, that took time in arranging even the small things.

Mr.Amarjeet Singh Chandiok, learned senior counsel appearing for the respondent submitted that Section 34(3) of the Act bare re-filing beyond the period stipulated therein. The said sub-section reads as follows :

"34.(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 request 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".

We find that said section has no application in re-filing the petition 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 granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied



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in this case, would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extension were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.

We are not inclined to accept this contention particularly, since the petitioner has offered an explanation for the delay for the period after the extensions.

Having regard to the overall circumstances of the case, we consider it appropriate in the interest of justice to set aside the impugned order.

Accordingly, the appeal is allowed and the impugned order of the High Court is set aside. We further direct that the objections of the appellant under Section 34 be taken on the file of the court and the matter be disposed of in accordance with law. The parties are directed to appear before the appropriate court on 28th November, 2016 after obtaining certified copy of this order.

15. As seen from the aforesaid decision, the Hon'ble Supreme Court has categorically held that Section 34(3) of the Arbitration and Conciliation Act, 1996 has no applicability for cases involving delay in re-filing.



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16. The other decision relied upon by the learned counsel for the applicant viz., *Ajay Dabra vs. Pyare Ram & others arising out of SLP (C) No.15793 of 2019*, dated 31.03.2023 while dealing with Section 149 of CPC and Section 4 of the Court Fees Act, the Hon'ble Supreme Court has held that Section 149 of the Civil Procedure Code mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court in its discretion to allow a person, who has filed a memorandum of appeal with deficit Court fee to make good the deficit and the making good of such deficit cures the defects in the memorandum not from the time when it is made but from the time when it was first presented in the Court. The facts of the second decision relied upon by the learned counsel for the applicant which is the *Ajay Dabra's case*, is slightly different from the case on hand. In *Ajay Dabra's case*, the Section 149 of the Code of Civil Procedure application seeking extension of time for the payment of Court fees was filed within the period of limitation for filing the appeal, whereas in the case on hand, the said application has been filed by the applicant beyond the period of limitation prescribed for filing the Section 34 petition under the Arbitration and Conciliation Act, 1996. Therefore, the decision rendered by the Hon'ble Supreme Court in *Ajay Dabra's*



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case referred to supra has no bearing to the facts of the instant case.

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17. Though, as seen from the decision rendered by a learned Single Judge of this Court in the case of ***General Manager and others vs. Veeyar Engineers and Contractors reported in 2019 SCC Online Mad 5586*** as well as in the decision rendered by the Division Bench of this Court in the case of ***Waaree Energies Limited, vs. Sahasradhara Energy Pvt. Ltd. reported in 2021 SCC Online Mad 5086***, the decision of the Hon'ble Supreme Court, in the case of ***Northern Railway vs. M/s.Pioneer Publicity Corp. Pvt. Ltd. in Civil Appeal No.10340 of 2016*** was not considered, the non consideration of the same will not have any impact on this Court's decision with regard to the issues on hand. In the ***Northern Railway*** judgment of the Hon'ble Supreme Court, referred to supra, the issue did not involve non payment of Court fees within the prescribed period of limitation as fixed under Section 34(3) of the Arbitration and Conciliation Act, 1996 but the issue involved in that decision was whether Section 34(3) of the Act is applicable for condoning the delay in re-filing also. The Hon'ble Supreme Court held that Section 34(3) of the Act has no application in re-filing the petition



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but only applies to the initial filing of the objections under Section 34 of the Act. In the case on hand, the Court fees payable by the applicant was not paid within the prescribed period of limitation as fixed under Section 34(3) of the Act and the petition under 149 CPC seeking extension of time for payment of court fees was also filed beyond the limitation period. Therefore, the decisions relied upon by the learned counsel for the respondent in ***General Manager and others vs. Veeyar Engineers and Contractors reported in 2019 SCC Online Mad 5586 and Waaree Energies Ltd., v. Sahasradhara Energy Pvt. Ltd. reported in 2021 SCC Online Mad 5086*** which dealt with identical issues viz., non payment of proper court fees within the limitation period as prescribed under Section 34(3) of the Act are squarely applicable to the facts of the instant case. Having paid the Court fees beyond the limitation period, the petition filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996, is not a proper presentation and therefore, the learned Master has rightly dismissed the applications filed by the applicant a) seeking to condone the delay of 191 days in representation and b) seeking to condone the delay of 211 days in paying the court fees. It is also to be noted that the applicant has once again been indifferent in filing applications aggrieved by the common



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order of the learned Master as there is a delay in filing these applications as well. The instant applications have been filed to condone the delay of 54 days in filing applications aggrieved by the common order of the learned Master, dated 21.02.2023 passed in A. Nos.507 and 509 of 2023.

18. Arbitration is an alternate Dispute Resolution Mechanism for expeditious adjudication of disputes. The object of the Arbitration and Conciliation Act, 1996 will be defeated if the applications as the ones which have been rightly dismissed by the learned Master under the common order are entertained. The learned Master has rightly dismissed the applications. Though Section 34(3) of the Arbitration and Conciliation Act, 1996 is not applicable to applications filed seeking to condone the delay in re-filing, the facts of the instant case does not empower this Court to entertain the applications filed for condonation of delay in re-filing as well as to condone the delay in paying the court fees as admittedly, the Court fees was paid beyond the period of limitation and the petition under Section 149 CPC seeking extension of time for payment of court fees was also filed beyond the limitation period as prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.



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19. The affidavit filed in support of the applications filed by the applicant seeking to condone the delay of 191 days in representing the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 as well as the application filed to condone the delay of 211 days in paying the Court fees is bereft of particulars. The affidavit is vague without giving details as to when the applicant was able to mobilise the funds for payment of Court fees and the steps taken by the applicant that relevant dates for challenging the Arbitral Award. When the applicant knows fully well that the prescribed period of limitation for challenging the Arbitral Award is a maximum period of 120 days, they ought to have been vigilant in complying with the returns raised by the Registry to their petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Master has rightly held that the applicant has represented the petition according to its whims and fancies.

20. The delay in representation of the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 has also not been properly explained. This Court also cannot find fault with the learned Master for having dismissed the applications on the ground of non



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payment of Court fees within the period of limitation. The reason given by the applicant for the delay is that the papers were misplaced. As rightly observed by the learned Master, the reason for the delay should be explained to the satisfaction of the Court. Having not satisfied the Court with supporting documents, mere statements made in the affidavit will not suffice.

21. It is also to be noted that the applicant has been indifferent and recalcitrant in these proceedings as well as there is a delay of 54 days once again in filing these applications. No sufficient reason has been given by the applicant for condoning the delay of 54 days in filing these applications.

22. For the foregoing reasons, this Court is of the considered view that eventhough this Court is only deciding the condone delay application filed to condone the delay of 54 days in filing applications challenging the common order of the learned Master, this Court has to necessarily dismiss these applications as even if these applications are allowed, there is no merit in the main applications as well which has



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been filed challenging the common order of the learned Master, dated 21.02.2023 passed in A. Nos.507 and 509 of 2023. No useful purpose would be served, if this Court adjudicates these applications alone and the main applications separately and that is the reason as to why the merits of the main applications are also discussed by this Court while adjudicating these applications.

23. In the result, there is no merit in these applications and therefore, they are dismissed. No costs.

21.09.2023

Index: Yes/ No
Speaking order / Non speaking order
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Pre-delivery order in
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