

**A.No.26 of 2022****in****Arb. O.P.D.No.15495 of 2022****26.04.2023****MASTER****ORDER**

This application has been taken to condone the delay of 665 days in representing the original petition under Section 34 of “The Arbitration and Conciliation Act, 1996” which is to set aside the award of the arbitrator. It is needless to say that the “Arbitration and Conciliation Act 1996” is a special statute which contains limitation period in itself to prefer original petition. Section 34 (3) of the Arbitration and Conciliation Act, 1996 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 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.

2. 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.

3. 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 3 months and 30 days and not thereafter. If the petition under Section 34 of the Arbitration and Conciliation Act is returned for defects, it is the duty of the petitioner to refile the same within the time fixed by the Court. The petitioner cannot be permitted to 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 shall be Vigilant in representation after getting the returned papers.

4. When the parties opted for ADR mechanism, they should have been vigilant in following the rule of limitation as contemplated in “The Arbitration and Conciliation Act 1996”. If the petitioner is dormant in his action, it is for him to face the consequences.

5. At this stage it is also relevant to mention the citation reported in 2016 Scc online Mad 26083



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O.S.A. Nos.420 to 425 of 2011

IndusInd Bank Limited Vs. Joseph Rajan Fernandes

2016 SCC OnLine Mad 26083

In the High Court of Madras

(Before Sanjay Kishan Kaul, C.J. And R.Mahadevan, J.)

4. In our view none of the above facts have emerged from the impugned order. It is trite to say that delay in refiling an Arbitration matter cannot be treated routinely when there is no provision for condonation of delay in case of the delay in filing being beyond the period of 120 days. The aspect of delay in refiling has been dealt with by the Division Benches of Delhi High Court taking into account the judicial precedents of the Hon'ble Supreme Court, in which the Special Leave Petition filed was dismissed, in National Project Construction Corporation Ltd., vs. Sadhu Singh and Company (2013) ILR I Delhi 99), and the discussion in this behalf qua the earlier Judgment is contained as under:

"2. We have observed in the case of Union of India v. Jia Lall Kishori Lall (P) Ltd., and Another (FAO(OS)334/2012) decided on 27.07.2012 as follows:

We may notice that the aspect of delay in re-filing in matters pertaining to objections to award has received the attention of this Court. This is so as by inordinate delay in refiling, a party cannot be permitted to do what it otherwise is not entitled i.e., the period of limitation operating in view of the provisions of the said Act. The views expressed by the Division Bench in the case of The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co., and other connected matters; MANU/DE/3065/2010: 2010 (120) DRJ 615, deal with this issue. There a finding has been reached that delay in re-filing is not to be condoned in routine. A special leave petition filed in one of the connected matters to The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co's case (supra) against the said order stands dismissed on merits after condoning the delay. The Division Bench after taking into account the pronouncement in Union of India v. Popular Construction Company; MANU/SC/0613/2001: (2001) 8 SCC 470 observed that in matters of condonation of delay in re-filing the petition, a stricter scrutiny, than is done while considering



an application for condonation of delay filed under Section 5 of the Limitation Act, 1963, has to take place keeping in mind that the total permissible period within which the application can be permitted to be filed under Section 34 of the said Act is 3 months plus an additional 30 days under Section 34(3) of the said Act. Thus, if the delay in re-filing exceeds this period, then the scrutiny becomes more rigorous and there has to be satisfactory and credible explanation for the delay. Otherwise, the legislative object of not permitting delayed objections from being filed gets defeated."

6. This Court reiterates the same words that if the delay in re-filing exceeds this period, then the scrutiny shall be more rigorous and there has to be satisfactory and credible explanation for the delay. Otherwise the legislative object gets defeated.

7. In the case in our hand the reason for the delay as “ *As certain particulars had to be called for from the petitioners with regard to the compliance in the said process their occasioned a delay of 665 days in getting these particulars*”

8. In fact the actual delay is more than 1000 days and after deducting the period excluded by the Hon'ble Supreme Court by suomoto writ petition due to covid-19, the number of days is arrived as 665 days. It is highly unbelievable that the counsel took such a long time to get information from his client to comply with the defects. There is no credible or justifiable reason stated by the applicant for the delay. The applicant or this counsel after receiving the returned papers kept



quite for a long time and leisurely filed this application according to his whims and fancies.

9. This court do not failed any merit in this application. Therefore this application is dismissed.

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ORDER PRONOUNCED

MASTER
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