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O.S.A.(CAD) No.88 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.(CAD) No.88 of 2022

and

C.M.P.No.9792 of 2022

The Board of Trustees of Chennai Port Trust,
Rep. by its Financial Advisor,
No.1, Rajaji Salai,
Chennai – 600 001.

...Appellant

Vs.

M/s.Chennai International Terminals Private Limited,
Chennai City Center,
Chennai – 600 004.

...Respondent

Prayer: Original Side Appeal (Commercial Appellate Division) filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 to set aside the order dated 25.08.2021 made in A.No.2381 of 2021 in OPD.No.37988 of 2017 and to condone the delay of 28 days in filing the OPD.No.37988 of 2017.

For Appellant : Mr.AR.L.Sundaresan,
Additional Solicitor General,
for M/s.Niranjan Rajagopalan
For Respondent : Mr.Arun Karthik Mohan



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J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

We have heard Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the appellant and Mr.Arun Karthik Mohan, learned counsel appearing for the respondent.

2. This appeal is at the instance of the Chennai Port Trust which is aggrieved by the order of the learned Single Judge refusing to condone the delay of 28 days in filing the application under Section 34 seeking to set aside the award.

3. The only reason that has been assigned for the delay as found in paragraph No.7 of the affidavit filed in support of the application for condonation of delay, is as follows:-

7) Aggrieved against the same, the petitioner respectfully submits that the award was dated 28.06.2017 and the same was received by the petitioner herein on 30.06.2017. The petitioner submits that as per Section 34(3) of the Arbitration and Conciliation Act, 1996, the time to file a petition to set aside the award 90 days from the date of receipt of award and further period of 30 days is given to file an



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award with a delay. The petitioner submits that the award was received on 30.06.2017 by the Joint Administration Department in the petitioner Trust and the same was forwarded to the Financial Adviser & Chief Accounts Officer who is filing the entire issue on 30.06.2017. The petitioner submits that thereafter the files were circulated on 21.10.2017 and a decision to file a petition to set aside the award was filed before this Hon'ble Court on 23.10.2017 and the same was forwarded to the Legal Advisor on 26.10.2017 and the petition to set aside the award was filed before this Hon'ble Court on 27.10.2017 and hence there arises a delay of 28 days in filing the petition. The petitioner submits that delay in filing to set aside the same is neither willful nor wanton, but due to the bonafide reasons as stated above. The petitioner submits that if the delay of 28 days in filing the petition is not condoned, the petitioner will be put to irreparable loss and untold hardship and on the other hand, no prejudice will be caused to the respondent herein.

4. The learned Single Judge after having noticed the difference in the language of the proviso to Section 34(3) of the Arbitration and Conciliation Act and the language found in Section 5 of the Limitation Act and after having referring to the judgments of the Hon'ble Supreme Court in the ***Government of Maharashtra (Water Resources Department) Rep. by***



Executive Engineer Vs. Borse Brothers Engineers & Contractors Pvt., Ltd., reported in ***2021 SCC Online SC 223*** and the judgment in ***Post Master***

General Vs. Living Media India Ltd., reported in ***2012 (3) SCC 563*** held that the reasons as found above do not constitute a sufficient cause within the meaning of Proviso to Section 34(3).

5. Though Mr.A.R.L.Sundaresan, learned Additional Solicitor General would venture to contend that there are documents to show that there were inter-departmental correspondence between the two Departments as to whether an application under Section 34 should be filed or not, we do not think we can look into those documents as such, when there is no pleading put forth in the affidavit filed in support of the petition. Paragraph No.7 of the affidavit which has been extracted above shows the most negligent, reckless and irresponsible manner in which the affidavits are filed by the Central Government Agencies while seeking condonation of delay, when the Hon'ble Supreme Court has time and again pointed out that Section 34(3) requires more justifiable reasons for condonation of delay.

6. Hence, we do not think we should interfere with the orders of the



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learned Single Judge. The appeal therefore fails and it is accordingly **dismissed**. The petition for receipt of additional evidence is also dismissed since there is no averment in support of the claim in the affidavit filed in support of the petition for condonation of delay regarding those inter-office communications. No costs.

(R.S.M., J.) (R.S.V., J.)
14.02.2024

dsa
Index :No
Internet :Yes
Neutral Citation : No
Speaking order



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