



Arb.O.P.(Comm.Div.)No.657

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 30.09.2024	PRONOUNCED ON 19.12.2024
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CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

Arb.O.P.(Comm.Div.)No.657 of 2022
and A.No.5512 of 2022

Union of India,
Rep., by its Executive Engineer,
CPWD, Thiruvapur Project Division – II,
Thiruvapur. ... Petitioner

Vs

M/s.V.R.Nirman Private Ltd.,
D.No.50-22-11, Varapurna Nilayam,
T.P.T., Colony, Seethammadhara,
Vishakapatnam – 530 013. ... Respondent

PRAYER:- Arbitration Original Petition filed under Section 34(2)(iv) of the
Arbitration and Conciliation Act, 1996 seeking for the following reliefs:-

- (i) To set aside the Arbitral Award dated 31.12.2021 and modified award dated 02.02.2022 passed by the Sole Arbitrator Mr.N.Ravi in its entirety.
- (ii) To direct the respondent to pay the costs and
- (iii) grant to such further or other reliefs that this Court may deem fit under the circumstances of the case

For Petitioners : Mr.AR.L.Sundaresan ASG for
Mr.M.Karthikeyan

For Respondents : Mr.R.Parthasarathy Sr., Counsel



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for Mr.S.Mohanasundararajan

ORDER

This Arbitration Original Petition has been filed under Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996(hereinafter called as 'the Act') to set aside the arbitral award dated 31.12.2021.

2. When the matter is taken up for hearing, a preliminary objection was raised by the learned Senior Counsel appearing for the respondent by contending that the O.P itself is liable to be struck off for the reasons that the same had been filed beyond the period of limitation as the petitioner had paid the deficit Court fee only on 07.07.2022, whereas the period of limitation would at any extent came to an end on 03.06.2022. Hence, this Court had directed the respective counsels to address on the issue of limitation for further proceeding in the matter.

3. Heard Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for Mr.M.Karthikeyan, learned counsel appearing for the petitioner and Mr.R.Parthasarathy learned Senior Counsel appearing for Mr.S.Mohanasundararajan, learned counsel appearing for the respondent.

4. The learned Additional Solicitor General would submit that an Award



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was initially passed on 31.12.2021 and the same was received by the parties on 06.01.2022. A Petition under Section 33 of the Arbitration and Conciliation Act (hereinafter referred to 'the Act')was filed by the petitioner for correcting some calculation errors and based upon the revised calculation a modified Award was passed on 02.02.2022 and was received on 04.02.2022. A Petition under Section 34 (1) of the Act was filed on 25.04.2022 and the same was returned by Registry for compliance of certain defects. On complying the defects pointed out by the Registry, the same had been represented on 02.08.2022 along with deficit Court fee. However, noting that certain of the returns are yet to be complied, the papers was again returned on 18.08.2022 and represented on 29.08.2022. In the said process, there had occasioned delay of 73 days in representing the O.P. and hence, an application had been taken. The learned Master by an order dated 07.11.2022 had condoned the delay on payment of cost of Rs.1,000/- to the Chief Justice Relief Fund which had also been paid by the petitioner. Therefore, he would submit that when the delay in representation had been condoned by the learned Master there can be no question of delay in filing the O.P. as the original O.P. had been filed as early as in the month of April, 2022 itself, well within the period of 90 days. He had also relied upon the judgment of the Hon'ble Apex Court reported in **(2009) 9 SCC 173** and contended that when there is an extension of time for payment of Court fee, the Court can always extend the time for payment of deficit Court fee.



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5. In this case, he would submit that the Registry had returned the papers for making deficit Court fee which had also been paid on 07.07.2022 before representing the O.P.. Since, there was a delay in representation, an application had been taken out and the same had been condoned. The respondent without challenging the same cannot be heard to say that the O.P. is barred by limitation.

6. He had also further relied upon a judgement of the Hon'ble Apex Court reported in **1970 (1) SCC 769** to contend that if an opportunity is given for curing the deficiency and if the same had been made good at the first instance by the deeming Provision of Section 149 of CPC, a Memorandum of Appeal is to have full force and effect for the facts of the case. He would submit that the petitioner had complied with the deficit in the first instance and therefore, it cannot be said that the OP is beyond the period of limitation. He had also further relied upon a judgement of the learned Single Judge of this court made in **S.A.No.640 of 2009 dated 16.09.2015** and contend that the Courts are empowered with discretion to allow the deficit of Court fee at any stage of proceedings by exercising the powers vested under Section 149 of CPC. He would submit that the provisions of CPC are applicable to the proceedings under the Arbitration and Conciliation Act and therefore by application of Section 149, the respondent cannot raise the issue of limitation since the deficit court fee had been paid by the petitioners. He has also further placed reliance of



the judgment of the Hon'ble Delhi High Court dated 09.01.2023 and contended that when the delay had been adequately explained, the Court can condone the delay.

7. In the present case, he would submit that the learned Master had accepted the reasons given by the petitioner to condone the delay in representation which had been made after curing the defect, hence, the O.P. is well within the time as the deficit cured would relate back to the date on which the O.P. had been filed and therefore, the O.P. is well within the period of limitation.

8. Contesting the claim made by the learned ASG, Mr.R.Parthasarathy learned Senior Counsel appearing on behalf of the respondent would submit that the judgments relied upon by the learned ASG would not apply to the case under the Arbitration and Conciliation Act. He would submit that the Act is a complete code in itself and when the provisions of the Act particularly Section 34 (3) (6) of the Act indicates that the time limit for filling the O.P. under Section 34 is 90 days and a further period of 30 days with an application to condone the delay with a reasonable cause alone can be entertained. He would submit that even though the petitioner had filed the petition as early as on 25.04.2022, the same had been filed without the payment of proper Court fee.

<https://www.mhc.tn.gov.in/dis> Therefore, the same cannot be treated to be a proper filing and hence, the same



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had not been accepted by the Registry and returned by the Registry. He would submit that even according to the petitioner the deficit Court fee had been complied with on 07.07.2022 and had been represented based on the payment of deficit Court fee only in the month of August, 2022 which is much beyond the period of 120 days. Therefore, the proper presentation of the O.P. would be taken to be on 02.08.2022 and not on 25.04.2022 and therefore, the O.P had been presented before the Court in the proper form only on 02.08.2022 which is much beyond the period of limitation as provided under Section 34 of the Act. He had also relied upon the judgment of the learned Single Judge reported in **2019 SCC Online Madras 5586**, wherein, the learned Single Judge had refused to condone the delay for the reasons that the Court fee had been paid much beyond the period of limitation. Further relying upon the Division Bench judgment of this Court reported in **2021 SCC Online Madras 5086** for the same preposition. He had further relied upon a judgment of the learned Single Judge made in Appln.Nos.2306 & 2309 of 2024 where this Court had affirmed the order of the learned Master rejecting the application for condonation of delay in holding that the payment of deficit Court fee was beyond the period of limitation.

9. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on <https://www.mhc.tn.gov.in/judis> record.



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10. It is an admitted case that the corrected Award was made on 02.02.2022 and delivered to the parties on 04.02.2022. Section 34(3) of the Act mandates that an application for setting aside the Award may not be made after a period of three months from the date on which the party making the application had received the arbitral Award and a further period of 30 days can be condoned if the Court is satisfied that the applicant was prevented by sufficient cause for making the application within the said period of three months. For better appreciation, the relevant provisions of the Act are extracted hereunder:-

Section 34 Application for setting aside arbitral awards.

(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.

11. In the present case, the petitioners have originally filed an application under Section 34(1) on 25.04.2022 and the same had been returned for various deficiencies including the defect indicating the payment of deficit Court fee and



it has also been indicated that blanks had been left in the petition and affidavit.

From the records it could be seen that the deficit Court fee of Rs.1,00,000/- had been paid by the petitioner on 07.07.2022 and the O.P was represented with the deficit Court fee on 02.08.2022. When admittedly, the Award had been received by the petitioner on 04.02.2022, the period indicated under Section 34 (3) begins on 04.02.2022. The three months period indicated would end on 03.05.2022 and sufficient time that could be extended under the Proviso to Sub-section 3 of Section 34 would end on 02.06.2022. Whether the presentation with the said defect namely the deficit Court fee could be deemed to be a proper presentation or not had already been decided by a learned Single Judge of this Court in the judgment relied upon by the respondent reported in **2019 SCC Online Madras 5586**. The learned Single Judge had categorically held that a proper presentation was made in the said case only after payment of necessary Court fee on 18.12.2018, even though the O.P was presented on 11.07.2018 with partial Court fee.

12. The learned ASG had relied upon various Judgments indicated above and a perusal of the said judgments would indicate that such orders has been passed by the Hon'ble Apex Court and the learned Single Judge of this Court by placing reliance upon Section 149 of CPC. The learned Single Judge in the very same judgment reported in **2019 SCC Online Madras 5586** had held that if an



Act, it would negate the rigour of Section 34(3). For better appreciation, the relevant paragraphs of the said order is extracted hereunder:-

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“26. In the instant case no petition has been filed under Section 149 of CPC by the petitioners. Even if a petition under Section 149 is filed, the same cannot be entertained in the light of specific bar under Sub-Section (3) and proviso thereto of Section 34 of A & C Act. No elucidation or elaboration is required for the proposition that CPC is a general procedure Code and A & C Act is a special statute. Most relevant portion of Special statute has also been explained in the authoritative pronouncement of Hon'ble Supreme Court i.e., Simplex Infrastructure principle. In the light of A & C Act, being a special statute even, if there be a petition (though there is none) under Section 149 of CPC, the same cannot be entertained.

27. This exercise of adverting to this aspect is done to examine whether there is any lifeboat available for the petitioners to extricate themselves from this predicament. Exercise of powers under Section 149 will virtually set at naught and nullify Section 34 (3) and the proviso thereto. It will neutralize and virtually negate Sub-Section(3) and proviso thereto of Section 34 of A & C Act. A provision in a general code like CPC cannot be used to negate a provision in a special statute like A & C Act. That a provision in a general Code like CPC will yield to a provision in a Special Statute is a obtaining legal principle that needs no illumine articulation by this Court as it is clear as daylight. Therefore, though there is no petition under Section 149 of CPC by the petitioners, this aspect of the matter was also examined by this Court to make this order as exhaustive as possible.



28. *Besides the rigour of sub-section 3 of section 34 of A & C Act, i.e., besides sub section (3) of section 34 and proviso thereto of A & C Act being non-negotiable, more so in the light of the authoritative pronouncement of Hon'ble Supreme Court in Simplex Infrastructure Ltd., there is another aspect of the matter which according to this court is of significance and it may be necessary to set out the same before parting with this case."*

13. In coming to such a conclusion, the learned Single Judge has also relied upon the judgment of the Hon'ble Apex Court in the case of ***Simplex Infrastructure Limited vs. Union of India*** reported in ***2018 SCC Online SC 2681***. A further reliance made upon by the learned Senior Counsel for the respondent was to the judgment which had been made by myself. I have analysed the aforesaid judgment of learned Single Judge and also the Division Bench of this Court in coming to the conclusion, wherein I have held that a defective presentation cannot be a proper presentation and only when the Court fee is duly paid then it becomes a proper presentation. For better appreciation, the relevant paragraphs are extracted hereunder:-

"8. It is an admitted case that the award against which the Original Petition had been filed before this Court had come to be passed on 14.10.2022 and the Original Petition under Section 34 had filed by the applicant on 06.12.2022. As per Section 34, the period of limitation of filing the instant Original Petition expired on 13.01.2023 and the further period of 30 days would also expire on 12.02.2023. It is also an admitted case that the Original Petition had returned for compliance by the Registry on 08.12.2022. One of the defects noted by



the Registry was deficit Court Fee of Rs.99,900/-. Even though reason has been attributed by the applicant as indicating that it was the fault on the part of the erstwhile clerk attached to the office of the counsel for the applicant, the issue that is to be decided is as to whether the same could be condoned in view of the provisions of the limitation enshrined in Section 34 of the Act. The issue in that aspect is no longer res integra. The learned Single Judge of this Court in the case of General Manager & Ors., vs. Veeyar Engineers & Contractors, reported in 2019 SCC Online Mad 5586 had held that allowing a person to pay the deficit Court fee beyond the period of limitation by condoning such non-payment of deficit Court fee within the limitation period, would virtually set at naught and nullify Section 34(3) and the proviso thereto. The learned Single Judge had also held that it will neutralize the very said provision by applying a provision of the Civil Procedure Code which empowers the Court to accept such the deficit Court fee.

9. Similarly a Division Bench of this Court in the case of Waaree Energies Ltd vs. Sahasradhara Energy Pvt., Ltd., reported in 2021 SCC Online Mad 5086, in an Original Side Appeal had also held that presentation of a petition with deficit Court fee is not a proper presentation which would arrest the period of limitation. It had also held that no Court can condone the delay in payment of deficit Court fee much beyond the period of limitation. In view of the aforesaid judgments of this Court, I am not inclined to interfere with the order of the learned Master impugned before me.”

14. In view of the aforesaid reasoning and findings and particularly the judgment of the learned Single Judge reported in 2019 SCC Online Madras 5586 and the order passed by myself in A.Nos.2306 & 2309 of 2024, dated



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03.09.2024, I hold that the presentation of the petitioner on 25.04.2022 cannot be said to be a proper presentation and the representation along with compliance of the deficit Court fee had been made only on 02.08.2022 which is beyond the period of limitation and for that reason, the O.P itself could not be entertained as the same had been filed beyond the period of limitation.

15. In fine, the O.P is dismissed as being barred by limitation. Consequently, connected application is closed.

Gba
Index :Yes/No
Speaking Order/Non Speaking Order

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