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A.No.2306 of 2024

A.Nos.2306 & 2309 of 2024
in
Arb.O.P.Dr.No.137436 of 2022

RESERVED ON 14.08.2024	PRONOUNCED ON 03.09.2024
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K.KUMARESH BABU.,J

COMMON ORDER

This instant Applications have been filed challenging the order of the learned Master wherein the applications to condone the delay in paying the deficit Court Fee as well as the application to condone the delay in representing the Arbitration Original Petition had been dismissed.

2.Heard Mr.K.Prahalad Bhat, learned counsel appearing for the Applicants and Mr.Sasidhar Sivakumar, learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioner would submit that an award had been passed under the MSMED Act against the applicant on 14.10.2022. Against the said award, an Original Petition



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came to be filed by the applicant on 06.12.2022, within the stipulated time. However, the same had been returned for certain compliances by the Registry. The same had been represented after complying the various defects pointed out by the Registry. For the said process, there had occasioned a delay of 439 days in representing the application as well as in payment of deficit Court fee. He would submit that the reason for not representing the same, was that the clerk attached to the counsel's office had fell ill and the return was not brought to the notice of the counsel. He would also contend that it was the clerk's mistake in not paying the deficit Court fee and only when it came to the knowledge of the counsel, immediately the defects have been complied including the payment of the deficit Court fee. He would also submit that since the clerk is no more attached to this office, an affidavit could not be filed by him and only after he left, it was found that the papers were returned by this Court and immediately, thereafter, the same had been complied with and represented before the registry. For the said process, there had occasioned a delay of 439 days both in representing the Original Petition and in payment of the deficit Court fee. He would submit that the delay in representation or the delay in payment of deficit Court fee, can be said



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to be neither wilful nor wanton. This aspect had been completely overlooked by the learned Master and he had dismissed the applications. Further he would submit that the learned Master had failed to take a liberal approach in seeking to condone the delays that too in representation of the appeal.

4. He would further submit that the award passed by the Arbitrator has not been communicated by the Arbitrator to the applicant. The copy had been only served on the counsel for the applicant. In that context, he would submit that the limitation period would only start from the date on which, the party is served with the arbitral award by the Tribunal and not from the date, when it has been served upon any other person. In that context, he would also rely upon the judgment of the Hon'ble Apex Court in the case of *State of Maharashtra & Ors., vs. ARK Builders Pvt Ltd.*, reported in (2011) 4 SCC 616 and *Benarsi Krishna Committee & Ors., vs. Karmyogi Shelters Pvt., Ltd.*, reported in (2012) 9 SCC 496. Therefore, he would submit that for filing the Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996, the limitation in respect of the application could not have been said to have begun when it has been



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served upon any other person. Further, the Original Petition had been filed only on the basis of the copy that had been served by the arbitrator to the counsel and therefore, the delay in payment of the Court fee cannot be put against him. Hence, he would seek indulgence of this Court to interfere with the order of the learned Master and pray this Court to condone the delay in both the representation and in paying the deficit Court fee.

5. Countering his arguments, the learned counsel appearing for the respondent would contend that the applicant has been purposefully delaying the process of the respondent to execute the award which was made on 14.10.2022. He would further submit that if it is the case of the applicant that the copy of the award have not been served upon the applicant, the Original Petition itself need not have been filed by the applicant.

6. It is not the case of the applicant, that the award has not been served upon the applicant, but on the other hand, it had been clearly averred in the Original Petition that the award was passed on 14.10.2022



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and a copy of which had been received on the same day. When such an averment has been made by the applicant in the Original Petition, the applicant cannot now wriggle out of the said statement and claim that the award has not been received, particularly when no such averment had been made in the petition. He would further submit that if from the admitted facts that had been narrated by the applicant in its application, the period of limitation would start from 14.10.2022 and the period of 90 days as stipulated would utmost come to an end on 13.01.2023 and the further period of 30 days would also come to an end by 12.02.2023. He would further submit that the respondents had taken out an execution proceedings on 15.11.2023 and only thereafter, the applicant had represented the papers. He would also submit that the applicant had not filed any Court fee as prescribed and therefore, the presentation of the Original Petition is not only a defective presentation, but an improper presentation. Only when the Court fee had been paid and represented, it becomes a proper presentation. Therefore, it cannot be said that the applicant had properly presented the application. He would further submit that the payment of deficit Court fee cannot be condoned beyond the period of 120 days that has been envisaged under Section 34 of the



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Act. Any payment of deficit Court fee beyond the said period cannot be condoned and had relied upon the judgment of this Court in the case of ***Vikranthi Foundations vs. Orient Builders*** reported in **2023 (4) LW 726** and a judgment of the Division Bench of this Court in the case of ***Waaree Energies Ltd vs. Sahasradhara Energy Pvt., Ltd.***, reported in **2021 SCC Online Mad 5086**. Hence, he would seek this Court to dismiss the applications filed by the applicant.

7. I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

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



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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



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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.

10. However, the learned counsel appearing for the applicant had strenuously contended that the award had not been handed over by the Arbitrator to the applicant. Relying upon the judgment of the Hon'ble Apex Court in the case of *State of Maharashtra & Ors., vs. ARK Builders Pvt Ltd.,* and *Benarsi Krishna Committee & Ors.,* (referred supra) he had vehemently contended that the period of limitation could only begun from the date on which the party had received the award and not otherwise.

11. I have perused the said judgments, in both the judgments, the party who had suffered the award, even though had knowledge of the award had preferred the petition under Section 34 at a very much later



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date. The Hon'ble Apex Court having found that the party had not been granted with the award by the Arbitrator are entitled to file Section 34 within the prescribed period, which begun from the date on which the award was actually handed over by the Arbitrator to the party concerned. In the present case on hand, the Original Petition had been filed by the applicant on 06.12.2022. A perusal of the said petition would indicate that the impugned award which was passed on 14.10.2022, was received on the same day. The said averment had been made in the petition to substantiate that the Original Petition had been filed within the time prescribed under sub-section (3) of Section 34. The said petition had been signed by the authorised signatory of the applicant. For better appreciation, the relevant paragraph 11 is extracted hereunder:-

“... It is submitted that the above original Petition is being filed within the time limit prescribed under Sub-Section 3 of Section 34 of the Arbitration and Conciliation Act, 1996. The impugned award was passed on 14/10/2022, a copy of which was received on the very same day, and therefore the above original petition is being filed within a period of three months as prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. ...”



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12. Since the applicant had filed the Original Petition, I am of the view that the judgments relied upon by the learned counsel appearing for the applicant cannot be applied to the present case. The applicant had specifically admitted in the paragraph extracted supra, that the award was passed on 14.10.2022 and the O.P., would have to be filed within the period of 90 days as stipulated under Section 34 of sub-section (3). Even though the applicant has contended that award was not given to the party, such a stand has not been taken out by the applicant in his initial application filed seeking to condone the delay in paying the deficit Court fee.

13. For the foregoing reasons, I do not find any infirmity or irregularity of the order impugned in these applications as being devoid of merits and therefore, these Applications are dismissed. Consequently, the Arb.O.P.Dr.No.137436 of 2022 is also dismissed.

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Pre-Delivery Order in
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