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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2024

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

C.M.P.No.16880 of 2024
in C.M.A (CAD) (SR) No.60636 of 2024
(Filing Number)

M/s.Shriram Finance Ltd.,
rep. by its authorized signatory B.Senthilnathan
No.123, Angappa Naicken Street
Chennai - 600 001, its Zonal Office at No.151
Maruthamalai Main Road, P.N.Pudur, Coimbatore ... Petitioner/ Appellant

vs.

1. L.Sofia Parvin

2. H.N.Mohamed Azad

3. Roshina Parveen

4. H.Fazul Milahi ... Respondents

(Cause title accepted vide Court order dated 16.07.2024 made in C.M.P.No.13161 of 2024 in C.M.A.Sr.No.60636 of 2024)

Prayer in C.M.P.No.13161 of 2024: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act read with Section 151 of CPC to condone the delay of 206 days in filing the above C.M.A (CAD) SR.No.60636 of 2024.

Prayer in C.M.A (CAD) (SR) No.60636 of 2024 : Civil Miscellaneous

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Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 01.08.2023 made in A.O.P.No.108 of 2023 on the file of the Commercial Court (District Judge Cadre) at Coimbatore.

For Appellant : Mr.A.Swaminathan

JUDGMENT

[Judgment of the Court was delivered by M.SUNDAR, J.]

Captioned 'Civil Miscellaneous Petition' ['CMP' for the sake of brevity] has been filed with a 'Condonation of Delay' ['CoD' for the sake of brevity] prayer qua 206 days delay in filing captioned 'Civil Miscellaneous Appeal' [hereinafter 'CMA' for the sake of brevity] i.e., C.M.A (SR) No. 60636 of 2024.

2. Captioned CMA is directed against an 'order dated 01.08.2023 made in A.O.P.No.108 of 2023 on the file of Commercial Court (District Judge Cadre), Coimbatore' [hereinafter 'impugned order' for the sake of convenience]. The Court, which made the impugned order, namely the 'Commercial Court (District Judge Cadre), Coimbatore' shall be referred to as 'said Commercial Court' for the sake of convenience and clarity.

3. In and vide the impugned order, the said Commercial Court has allowed an arbitration petition under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for

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the sake of convenience and clarity]. To be noted, an award dated 11.01.2020 made by an 'Arbitral Tribunal' ['AT' for the sake of brevity] was set aside by the Section 34 Court (said Commercial Court) vide the impugned order.

4. Short facts are that there was a loan transaction between the petitioner company (Shriram Finance Ltd.,) and R2 (H.N.Mohamed Azad); that according to the petitioner company, R2 availed a loan of Rs.15 lakhs and R1, R3 and R4 stood guarantee. In other words, R1, R3 and R4 are guarantors and R2 is the borrower; that according to petitioner company, there was a default in repayment necessitating arbitration agreement (in the loan agreement) being triggered; that AT in Coimbatore passed an award in favour of petitioner Company being award dated 11.01.2020; that thereafter, R1 before us (one of the guarantors) preferred A.O.P.No.108 of 2023 assailing the award; that said Commercial Court relying on ***S.P.Singla*** case law [***BBR (India) Pvt. Ltd., Vs. S.P.Singla Constructions Pvt. Ltd.,*** reported in ***2022 (3) Arb LR 636 (SC)***] rendered by Hon'ble Supreme Court *inter alia* held that arbitration is anchored in the 'seat', the 'seat' is Salem and therefore, the arbitration held in Coimbatore is clearly one where the AT lacks jurisdiction; that assailing this impugned order, captioned appeal has

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been filed in this 'Commercial Appellate Division' ['CAD' for the sake of brevity] with a delay of 206 days.

5. As regards the reason for delay, all that the petitioner Company has said is that Section 34 petition was originally taken on file as A.O.P.No.225 of 2021 on the file of learned Principal District Judge, Coimbatore, the petitioner Company entrusted the matter to one Ms.D.Kavitha, Advocate, the learned counsel filed Vakaklatnama on 10.02.2022 but thereafter, learned counsel did not follow up the matter. It has also been averred that A.O.P.No.225 of 2021 was transferred to said Commercial Court on a dedicated Commercial Court being constituted in Coimbatore and it was re-numbered as A.O.P.No.108 of 2023 on the file of said Commercial Court. It has also been averred that there was no updation of Court hearing in the said e-Courts portal.

6. When the captioned CMP was listed before this Court on 08.08.2024, the following proceedings were made:

'C.M.P.No.16880 of 2024

in C.M.A (SR) No.60636 of 2024

M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by M.SUNDAR.J.,)

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Mr.A.Swaminathan, learned counsel for petitioner submits that his case for 'Condonation of Delay' ['CoD' for the sake of brevity] qua 206 days in filing captioned C.M.A (SR) No.60636 of 2024 may qualify vide paragraph 63 of ***Borse Brothers*** *case [****Borse Brothers Engineers and Contractors Private Limited Vs. Government of Maharashtra (Water Resources Department) Represented by Executive Engineer*** *reported in* ***(2021) 6 SCC 460****].*

2. Learned counsel draws our attention to paragraphs 6 and 7 of the support affidavit. However, learned counsel requests for sometime to examine the matter further before making further submissions in this regard. Request acceded to.

List a fortnight hence. List in the Admission Board i.e., Motion List on 22.08.2024.

(M.S.J.) (K.G.T.J.)
08.08.2024'

7. The aforementioned proceedings are tell-tale. In the light of aforementioned proceedings, we deem it appropriate to extract and reproduce Paragraphs 6 and 7 of the support affidavit and the same read as follows:

'6) I state that aggrieved by the arbitral award dated 19.11.2021, the 1st Respondent L.Sofia Parvin had filed petition before the Learned Principal District Judge, Coimbatore to set

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aside the arbitral award under section 34 of the Arbitration and Conciliation Act, 1996. The said petition was numbered as A.O.P.No.225 of 2021. On receipt of the notice, we have engaged our counsel Ms.D.Kavitha and she filed vakalat on 10.02.2022. Thereafter, the Petition was periodically adjourned for service of notice to other Respondents and counter. Our office followed this case through e-court application. During April 2023, the above petition was transferred to the Commercial Court, Coimbatore [consequent to the establishment of a special court i.e., Commercial Court, Coimbatore]. The said court was established in the separate premises and during the initial period, there was no updation of court hearing in the e-court application. Our counsel informed us that, she would intimate the hearings when the Petition will be taken up for final hearing. However, we have not received any intimation from our counsel.'

'7) I state that during March 2024 to finalise the accounts for the financial year 2023-24, we have enquired with our counsel with regard to the status of the above pending case but to our shock, we came to know that the above Petition was allowed by order dated 01.08.2023 and the award was set aside. Immediately we have requested our counsel to apply for the order copy of the same and she filed copy application on 01.04.2024 and the same was received on 16.04.2024. On receipt of the order copy immediately we have filed the above appeal before this Court.'

8. Mr.A.Swaminathan, learned counsel for CMP petitioner i.e.,

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petitioner Company emphasized that the counsel, who was engaged, was negligent, presence of the party for each hearing is not imperative in Section 34 Court and that his case falls within the sweep of paragraph 63 of ***Borse Brothers***.

9. We also deem it appropriate to respectfully reproduce Paragraph 63 of ***Borse Brothers*** case [***Borse Brothers Engineers and Contractors Private Limited Vs. Government of Maharashtra (Water Resources Department) Represented by Executive Engineer*** reported in ***(2021) 6 SCC 460***] and the same reads as follows:

> ***'63.*** *Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.'*

10. We carefully considered the submissions and the case file.

11. At the out set, as regards the updation in the e-Courts portal, we find that the matter has been periodically updated both by the learned Principal District Judge as well as the said Commercial Court and e-

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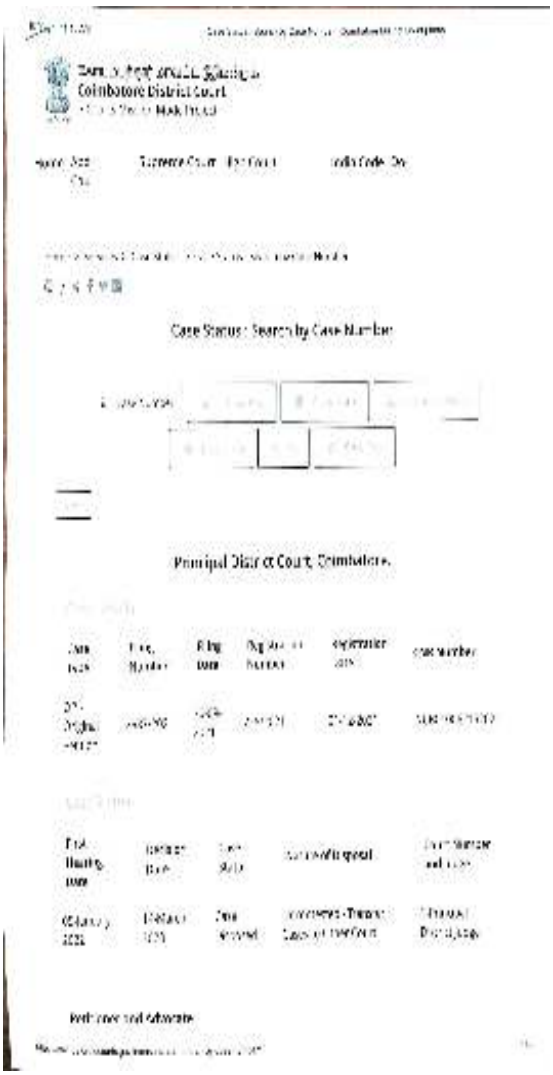
Courts portal as regards Coimbatore District reads as follows:



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1) L Sofia Parvin
Advocate - Prabhakar.S

Respondent and Advocate

1) Shri Ram City Union Finance Ltd
Advocate - Kavitha.D

2) H.N.Mohamed Azad

3) Roshini Farveen

4) Fazal Milahi

Under Act(s)	Under Section(s)
Arbitration and Conciliation Act	34

IA Number	Party Name	Date of Filing	Next Date	IA Status
IA/ /2021 Classification :	L Sofia Parvin II Fazal Milahi	[illegible]-12-2021	06-04-2023	Disposed

Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing
225/2021	Principal Senior Judge	24-01-2022	10-02-2022	Issue of Service
225/2021	Principal District Judge	18-02-2022	18-03-2022	Counter
225/2021	Principal District Judge	18-05-2022	28-04-2022	IA / EA Pending / CMP Pending / CRP Pending / CMA Pending
225/2021	Principal District Judge	28-04-2022	23-05-2022	IA / EA Pending / CMP Pending / CRP Pending / CMA Pending
225/2021	Principal District Judge	23-05-2022	01-06-2022	IA / EA Pending / CMP Pending / CRP Pending /

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24, 11:38 AM Case Status : Search by Case Number | Coimbatore District Court | India

Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing
				CMA Pending
225/2021	Principal District Judge	24-08-2022	08-09-2022	IA / EA Pending / CMP Pending / CRP Pending / CMA Pending
225/2021	Principal District Judge	08-09-2022	10-09-2022	IA / EA Pending / CMP Pending / CRP Pending / CMA Pending
225/2021	Principal District Judge	10-09-2022	13-10-2022	IA / EA Pending / CMP Pending / CRP Pending / CMA Pending
225/2021	Principal District Judge	13-10-2022	01-12-2022	Counter
225/2021	Principal District Judge	01-12-2022	02-01-2023	Counter
225/2021	Principal District Judge	02-01-2023	21-02-2023	Counter
225/2021	Principal District Judge	21-02-2023	14-03-2023	Counter
225/2021	Principal District Judge	14-03-2023		Disposed

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Last Updated: Sep 12, 2024

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Coimbatore District Court
e-Courts Mission Mode Project

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Case Status : Search by Case Number

Case Status : Search by Case Number

Case Number | FIR Number | Party Name | Advocate Name | Case Code | Act | Case Type

Back

COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE

Case Details

Case Type	Filing Number	Filing Date	Registration Number	Registration Date	CNR Number
OP - Original Petition	135/2023	30-09-2021	108/2023	01-12-2021	TNCB220001692023

Case Status

First Hearing Date	Decision Date	Case Status	Nature of Disposal	Case Transferred from Establishment	Transfer Date	Court Number and Judge
06-April-2023	01-August-2023	Case Disposed	Contested - Allowed	principal district court, coimbatore [	2023-04-06	1-COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE

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First Hearing Date	Decision Date	Case Status	Nature of Disposal	Case Transferred from Establishment	Transfer Date	Court Number and Judge
				TNCB01006215 2021 1		

Petitioner and Advocate

1) L.Sofia Parvin
Advocate - Prabhakar.G

Respondent and Advocate

1) Shri Ram City Union Finance Ltd
Advocate - Kavitha.D

2) H.N.Mohamed Azad

3) Roshina Parveen

4) H.Fazul Milahi

Acts

Under Act(s)	Under Section(s)
ArbitrationandConciliationAct	34

IA Status

IA Number	Party Name	Date of Filing	Next Date	IA Status
IA/1/2021 **Classification :**	L.Sofia Parvin H.Fazul Milahi	01-12-2021	01-08-2023	Disposed

Case History

Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing

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Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	06-04-2023	25-04-2023	Arguments
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	25-04-2023	12-06-2023	Arguments
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	12-06-2023	15-07-2023	Arguments
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	15-07-2023	20-07-2023	Arguments
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	20-07-2023	01-08-2023	Orders
108/2023	COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE	01-08-2023		Disposed

Final Order

Order Number	Order Date	Order Details
1	01-08-2023	Copy of Order

12. We find that the impugned order being order dated 01.08.2023 has also been duly uploaded in the official portal. Therefore, all that the petitioner Company needs to have done is, gone into the e-Courts portal and verified using one of the search parameters. The petitioner is a Public Limited Company. There is no disputation that it has a legal team. It is not a case of Lilliputian qua resource to do this simple act but even a common man today has access to all these portals.

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13. The affidavit is also bare and bald as it does not disclose either the manner in which petitioner company came to know about impugned order or the exact date on which the petitioner Company came to know about the impugned order. There are no details as regards communication between the petitioner Company and its counsel.

14. As regards paragraph 63 of ***Borse Brothers***, it has been made clear that condonation beyond three months and 30 days in arbitration appeals can be only by way of exception and not by way of rule. It has also been made clear by Hon'ble Supreme Court that if it is a short delay where it is shown that a party has otherwise acted bonafidely and not in a negligent manner, the delay can be condoned at the discretion of the Court (to be noted, paragraph 63 of the ***Borse Brothers*** has been extracted and reproduced supra). We are unable to persuade ourselves to believe that this is a case where the CMP petitioner has acted in an diligent manner. Therefore, it cannot be gainsaid that it is not a case of not acting in a negligent manner. As regards the opposite party, we find that the protagonist of the 34 petition, who is a guarantor, has acquired certain rights which are attributable to inaction, negligence and laches on the part of the CMP petitioner.

15. Before we proceed further, as regards the prescribed period for

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filing a Section 34 petition (which has been telescoped into Section 37 vide ***Borse Brothers***), it is expressed in units of months. It is three months. As regards the condonable period or cap, it has been expressed in units of days and it is 30 days. Section 34(3) together with the proviso thereat read as follows:

> *'34.* ***Application for setting aside arbitral award.-***
>
> *(1) .....*
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> *(2) .....*
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> *(a) .....*
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> *(i) .....*
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> *(ii) .....*
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> *(iii).....*
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> *(iv).....*
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> *(v) .....*
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> *(b) ....*
>
> *(i).....*
>
> *(ii)....*
>
> *Explanation 1. .....*
>
> *(i) .....*
>
> *(ii) .....*
>
> *(iii).....*
>
> *(2A) .....*
>
> *(3). An application for setting aside may not be made after three months have elapsed from the date on which the*

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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.

.....'

16. Therefore, we respectfully write that the 'prescribed period' and 'condonable period' put together may or may not be 120 days in a given case. Therefore, we respectfully write that it is three months and 30 days and we also recollect ***Dodds Vs. Walker*** reported in ***(1981) 2 All ER 609 (HL)***, an English case law, which brings out the distinction between measure of time in 'months' as units and 'days' as units. In ***Dodds Vs. Walker,*** it was held that when the period is expressed in terms of 'months' as units, the general rule is that the period ended on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. ***Dodds Vs. Walker,*** an English Law has been relied on by Hon'ble Supreme Court in ***Himachal Techno***

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Engineers case [***State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another*** reported in ***(2010) 12 SCC 210***], relevant paragraphs are paragraphs 14 to 18 and the same read as follows:

> *'**14.** The High Court has held that "three months" mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.*
>
> ***15.** Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as "three months" and "one month" respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.*
>
> ***16.** Section 3(35) of the General Clauses Act, 1897 defines a "month" as meaning a month reckoned according to the British calendar.*
>
> ***17.** In Dodds v. Walker [(1981) 1 WLR 1027 : (1981) 2 All ER 609 (HL)] the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month*

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irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar [(2001) 7 SCC 197] .

18. *Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.'*

17. Be that as it may, learned counsel Mr.Swaminathan, strenuously contended that it is only owing to inaction on the part of the counsel and pressed into service ***Jaitley Construction Co. Vs. Union of India*** being an order made by Hon'ble Supreme Court vide order dated 24.11.2023. We are unable to accept the contention that it is inaction on the part of the counsel alone as nothing prevented the petitioner Company from contacting the counsel to ascertain the proceedings in the Court. It would be clear that there were as many as 13 listings/hearing before the Principal District Court, Coimbatore and as many as 5 listings/hearing before the said Commercial Court before the impugned order was ultimately made. Even in the penultimate hearing, an opportunity was given to the respondent as would be evident from the proceedings of the said Commercial Court vide proceedings dated 20.07.2023, which reads as follows:

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Commercial Court in the Cadre of District Judge, Coimbatore

In The Court Of : COMMERCIAL COURT IN THE CADRE OF DISTRICT JUDGE

CNR Number : TNCB220001602023

Case Number : OP/0000108/2023

Date : 20-07-2023

L.Sofia Parvin **Versus** Shri Ram City Union Finance Ltd

Daily Status

Business	Next Purpose	Next Hearing Date
IA 1/2023 - Enquiry by 01-08-2023. Interim order extended till then. Memo recorded. AOP 108/2023 - R1 and Counsel for R1 absent. Counsel for Petitioner Present. The respondent counsel is hereby directed to submit his oral or Written Arguments on or before 31-07-2023, failing which orders will be passed on 01-08-2023 based on	Orders	01-08-2023

18. It has been made clear that orders will be passed on 01.08.2023 and it is like a final boarding call and the petitioner Company has overlooked all these.

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19. Reverting to ***Jaitley Construction Co.*** case law, order of the Hon'ble Supreme Court runs as follows:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(ARISING OUT OF S.L.P (CIVIL) NO(S). 12188/2023)

M/S JAITLEY CONSTRUCTION CO. APPELLANT(S)

VERSUS

UNION OF INDIA RESPONDENT(S)

ORDER

Leave granted.

By the impugned order dated 6th February, 2023, the High Court has not condoned the delay of 244 days in preferring an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"). In view of what is held in paragraph 63 of the decision of this Court in the case of *Government of Maharashtra (Water Resources Department) represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited*[1], delay in filing an appeal under Section 37 of the Arbitration Act, beyond the stipulated period of limitation, can be condoned by way of an exception and not by way of a rule, by exercising the power under Section 5 of the Limitation Act, 1963.

After having perused the grounds taken in the application for condonation of delay and the documents produced along with the application, we find that this case will have to be held as an exception as observed in paragraph 63 of the aforesaid decision. Sufficient cause is made out to condone the delay.

1 (2021) 6 SCC 460

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We, therefore, set aside the impugned order dated 6th February, 2023 and condone the delay in preferring the appeal under Section 37 of the Arbitration Act. We remit the appeal to the High Court for deciding afresh. The High Court will proceed to decide the appeal on its own merits.

The Appeal is, accordingly, allowed.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
NOVEMBER 24, 2023.

20. To ascertain the reason that was advanced, we looked at the Delhi High Court order and we find that it is a case where the counsel of the party seeking CoD had passed away and this unfortunate development is the reason and it is also a case where Hon'ble Delhi High Court has proceeded on the basis that each days delay has to be explained. Paragraphs 3 and 4 of Delhi High Court order are of relevance and we deem it appropriate to extract the entire order which is as follows:

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO (COMM) 34/2023, & CM APPL. 5502/2023

M/S JAITLEY CONSTRUCTION CO. ..... Appellant

Through: Mr. Avneesh Kumar Upadhyay and Mr. Ananay Chopra, Advocates.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Jaswinder Singh with Mr. Sahib Gurdeep Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

% **ORDER**
06.02.2023

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 5501/2023 (Delay of 244 days in filing)

1. The applicant seeks condonation of delay of 244 days in filing of the appeal. The impugned judgment was pronounced on 22.03.2021. The period of limitation commences from 01.03.2022 as the computation of period of limitation was excluded from 15.03.2020 till 28.02.2022 *vide* order dated 10.01.2022 by the Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020.

2. The learned counsel for the applicant submits that the applicant was suffering from mild disc osteophyte complexes seen at C5-6 and C6-7 levels indenting the ventral epidural space. This is a spinal problem

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and not necessarily acute in nature which could render him incapacitated from taking legal advice or managing his business or legal affairs. The applicant is also stated to be hypertensive and suffering from heart ailments. In any case, the period of treatment is not mentioned and the medical certificate is of 04.08.2020. It does not extend to 2021 or thereafter. Therefore, the explanation is not founded on any evidence.

3. The applicant's earlier counsel is stated to have since passed away. That is an unfortunate development. However, in today's world, much work, including advice/instructions/consultations, be it business related or medical or legal, is done through internet. The applicant could have taken recourse. It is a known fact that courts throughout the country were convened virtually, during the debilitating COVID-19 period.
4. Each delay has to be explained. There is nothing in the application which explains delay of 244 days.
5. In view of the above, the application is dismissed as being without merits.

FAO (COMM) 34/2023, & CM APPL. 5502/2023

6. The appeal is dismissed as not maintainable on account of delay and laches. Pending application, if any, too is dismissed.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

FEBRUARY 6, 2023
SS

This is a digitally signed order.
The authenticity of the order can be verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 06/06/2024 at 16:11:00

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21. We are of the view that case on hand is completely distinguishable on facts qua ***Jeitley Construction Company*** case and therefore, we respectfully write that we would follow ***Borse Brothers*** and hold that Paragraph 63 of ***Borse Brothers*** does not come to the aid of the CMP petitioner in this case.

22. Proceeding further, we need to set out a few other aspects of the matter for completion of the narrative and they are as follows:

i) As regards a petition under Section 34, the time limit prescribed vide sub-section (6) of Section 34 is one year for disposal of the same. Sub-section (6) of Section 34 reads as follows:

> *'34. **Application for setting aside arbitral award.-***
>
> *(1) .....*
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> *(2) .....*
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> *(a) .....*
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> *(i) .....*
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> *(ii) .....*
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> *(iii).....*
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> *(iv).....*
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> *(v) .....*
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> *(b) ....*
>
> *(i).....*

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(ii)....

Explanation 1. .....'

(i) .....

(ii) .....

(iii).....

(2A) .....

(3) .....

(4) .....

(5) .....

(6) An application under this Section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

.....'

ii) In ***Bhumi Vikas Bank*** case law [***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in ***(2018) 9 SCC 472***], sub-section (5) of Section 34 notice has been held to be directory and not mandatory. Therefore, this Court has repeatedly held that one year has to be computed from the date of presentation of Section 34 petition. This means that there is a time line prescribed

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for disposal of Section 34 petition and these time lines are rigid;

iii) As the period of limitation as well as prescribed period qua Section 34 of A and C Act has now been telescoped into Section 37 vide ***Borse Brothers***, we deem it appropriate to say that this one year time line would be of relevance and the delay sought to be condoned is 206 days which by itself is close to an year;

iv) As already alluded to supra, Section 34 Court i.e., said Commercial Court has allowed the Section 34 petition primarily on the ground that AT lacks jurisdiction. In other words, the seat is elsewhere and this has been done by the said Commercial Court by respectfully following ***S.P.Singla*** case law, the principle laid down by Hon'ble Supreme Court. It is to be noted that this impugned order does not turn on merits. Be that as it may, the consequence of the impugned order is re-arbitration vide paragraph 52 of ***McDermott*** principle [***McDermott International Inc.V. Burn Standard Co. Ltd., and Ors.*** reported in ***(2006) 11 SCC 181)***].

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Therefore, the petitioner Company can always resort to re-arbitration and it is not a case where everything is lost. Obviously, if re-arbitration is resorted to, all the rights and contentions of the respondents who are not before us will stand preserved as they are not before this Court.

23. In the light of the narrative, discussion and dispositive reasoning thus far, we are not inclined to issue notice, sequitur is, CMP is dismissed and the captioned CMA stands rejected at the SR stage itself. We refrain from imposing costs.

(M.S.,J.) **(K.G.T.,J.)**
19.09.2024

Index : Yes
Neutral Citation : Yes
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M.SUNDAR, J.,
and
K. GOVINDARAJAN THILAKAVADI, J.,

gpa

To

1. The Commercial Court (District Judge Cadre)
   Coimbatore

2. The Section Officer
   VR Section Madras High Court

C.M.P.No.16880 of 2024
in
C.M.A (CAD) (SR) No.60636 of 2024

19.09.2024