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C.M.P.No.20069 of 2024

C.M.P.No.20069 of 2024
in
Arb.Appeal SR.No.115325 of 2024
(Filing Number)

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 11.09.2024 which reads as follows:

'C.M.P.No.20069 of 2024
in
Arb.Appeal SR.No.115325 of 2024
(Filing Number)

M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Captioned 'Civil Miscellaneous Petition'

{hereinafter 'CMP' for the sake of brevity} has been filed



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with 'Condonation of Delay' {'CoD'} prayer qua 122 days.

2. Captioned main appeal is one under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity).

3. In the light of **Borse** principle [**Government of Maharashtra (Water Resources Department) Vs. M/s.Borse Brothers Engineers & Contractors Pvt. Ltd., reported in (2021) 6 SCC 460**] Mr.S.R.Raghunathan, learned counsel on record for petitioner requests for a short accommodation to examine the position and revert to this Court. Request acceded to.

List one week hence. List on 18.09.2024.'

2. Today, Mr.Alladi Rahul, learned counsel on record for petitioner, advertng to afore-referred earlier proceedings dated 11.09.2024 submitted that paragraph No.63 of **Borse** principle comes to his rescue. To be noted, paragraph No.63 of **Borse** principle reads as



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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.'

3. This 'Commercial Appellate Division' {'CAD' for the sake of brevity} for completion of narrative, deems it appropriate to write that in



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NV International case law {***N.V. International Vs. State of Assam and***

others reported in ***(2020) 2 SCC 109***}, rendered on 06.12.2019 a two

Judge Bench of Hon'ble Supreme Court (after referring to earlier order of

another two Judge Bench in ***Varindera*** case being ***Union of India Vs.***

Varindera Constructions Limited reported in ***(2020) 2 SCC 111***

rendered on 17.09.2018) held that delay beyond condonable cap / period

post prescribed period is not condonable as regards Section 37 appeals as

in Section 34 petitions. Subsequently, in ***Borse*** principle rendered by a

three Judge Bench on 19.03.2021, ***NV International*** case law was held

to be not laying down correct principle and that it did not notice the

provision of 'The Commercial Courts Act, 2015 [Act 4 of 2016]'

{hereinafter 'CCA' for the sake of brevity} at all. To put it differently,

Borse principle laid down that ***NV International*** case law is *per*

incuriam in this aspect of the matter i.e., CCA aspect. It is in this



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context, the aforementioned paragraph No.63 of **Borse** principle was rendered.

4. We find twin conditions in paragraph No.63 of **Borse** principle, (a) whether the delay is short, party has been *bona fide* and not negligent and (b) the position of opposite party.

5. As regards the reason for delay, adverting to support affidavit, learned counsel for petitioner submitted that the petitioner is in Hyderabad, the original litigation was in Coimbatore, the appeal is in Chennai and this has caused the delay. Paragraph No.3 of the support affidavit was adverted to. As regards the opposite party, R2 has already filed an appeal against the same impugned order vide C.M.A.No.1888 of 2024, the same is admitted, notice has been issued on 31.07.2024, an interim order has been granted and the same is operating. R1 and R3



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being parties to this CMA are no differently placed.

6. Issue notice.

7. Mr.N.Umapathi, learned standing counsel accepts notice for R1 {Coimbatore City Municipal Corporation}, Mr.P.Giridharan, learned counsel, who is on 'Videoconferencing' platform {'VC'} accepts notice for R2 {HNB Engineers Private Limited} and Mr.S.R.Raghunathan, learned counsel accepts notice for R3 {TVRCPL-HNBEPL (JV)}. To be noted, this is a Hybrid Hearing, which is a daily / regular / routine feature in this Court.

8. Learned counsel for respondents agreed to have the CMP heard out without waiting for counter, considering the nature of the matter. Learned Standing Counsel for R1 submitted that the petitioner could have been diligent and as regards position of opposite party, it is a matter of record. As regards R2 and R3, both learned counsel submitted that they



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are not opposing the CoD prayer. This submission is recorded.

9. We carefully considered the submissions on either side as regards petitioner and R1. We find that the cause shown is acceptable in the facts and circumstances of the case, nature of the matter, the trajectory the matter has taken, the opposite party has also having filed an appeal against the same impugned order and interim order operating in favour of opposite party (R2).

10. We also considered the position that when there are two appeals against the same impugned order and when they are in the nature of cross appeals, permitting only one appeal to have hearing in CAD and shutting the other at threshold may not be a ideal situation. This unique feature of this case also weighed in the mind of CAD in acceding to the CoD prayer. In the same breath, we add that this will not serve as a precedent for all and every case where paragraph No.63 of **Borse**



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principle is resorted to. In other words, the cases where paragraph No.63 of **Borse** principle is resorted to, will be tested on case to case basis on their own merits and in accordance with law.

11. Prayer in captioned CMP is acceded to albeit with the aforementioned caveat.

12. Captioned CMP is allowed / ordered as prayed for subject to payment of Rs.15,000/- in favour of Blue Cross of India, No.72, Velachery Road, Guindy, Chennai -32 and the same shall be paid by day-after-tomorrow i.e., 20.09.2024.

List on 23.09.2024 under the cause list caption 'FOR REPORTING COMPLIANCE'.

[M.S., J]

[K.G.T., J]

18.09.2024



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P.S. I: Upload forthwith

P.S.II : All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

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and

K.GOVINDARAJAN THILAKAVADI, J.,

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