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O.S.A.No.310 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.No.310 of 2019  
and C.M.P.Nos.25447 of 2019, 4243 of 2021,  
19155, 19158 and 19160 of 2024

RELIGARE BROKING LIMITED  
GYS GLOBAL A-3, 4, 5, PLOT NO.11,  
SECTOR 125, NOIDA - 201 301,  
REP BY ITS ASSOCIATE VICE PRESIDENT  
AND AUTHORIZED SIGNATORY, V.ELUMALAI .. Appellant

Versus

1. JOSEPH J.NADUVILAPARAMPIL
2. V.PAUL DAS (DELETED)  
PRESIDING ARBITRATOR,  
APPELLATE ARBITRATORS PANEL,  
NATIONAL STOCK EXCHANGE OF INDIA LTD,  
8TH FLOOR, ARIHANT NITCO PARK,  
NO.90, DR.RADHAKRISHNAN SALAI,  
MYLAPORE, CHENNAI - 600 004.



O.S.A.No.310 of 2019

WEB COPY

3. P.CHANDRASEKHAR(DELETED)  
CO-ARBITRATOR, APPELLATE ARBITRATORS PANEL,  
NATIONAL STOCK EXCHANGE OF INDIA LTD,  
8TH FLOOR, ARIHANT NITCO PARK,  
NO.90 DR.RADHAKRISHNAN SALAI,  
MYLAPORE, CHENNAI - 600 004
4. C.MADASAMY(DELETED)  
CO-ARBITRATOR, APPELLATE ARBITRATORS PANEL,  
NATIONAL STOCK EXCHANGE OF INDIA LTD,  
8TH FLOOR, ARIHANT NITCO PARK,  
NO.90 DR.RADHAKRISHNAN SALAI,  
MYLAPORE, CHENNAI - 600 004.

[R2 to R4 deleted vide order of Court  
dated.19.08.2024]

Prayer : Appeal under Order 36 Rule 1 of the Original Side Rules and Clause 15 of the Letters Patent to set aside the judgment and decretal order dated 10.07.2019 in O.P.No.312 of 2015 on the file of this Court, allow the appeal by setting aside the award dated 12.7.2014 passed by the Arbitral Tribunal of the National Stock Exchange (NSE) and confirmed by award dated 10.12.2014 passed by the Appellate Tribunal of the National Stock Exchange (NSE).

For Appellant : Mr.Sundar Narayan



WEB COPY



O.S.A.No.310 of 2019



WEB COPY



O.S.A.No.310 of 2019

## JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal was filed against a judgment dated 10.7.2019 dismissing the Original Petition bearing No.312 of 2015 filed by appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) confirming the award dated 12.7.2014 passed by the Arbitral Tribunal of the National Stock Exchange (NSE), which was confirmed by an award dated 10.12.2014 passed by the Appellate Tribunal of the NSE. Therefore, this appeal has been filed after losing in three rounds.

2. Appellant has been enjoying an injunction which was passed vide an order dated 28.11.2019 by this court restraining NSE from disbursing the amounts covered under award dated 12.7.2014 passed by the Arbitral Tribunal of NSE and confirmed by the Appellate Tribunal of NSE vide order dated 10.12.2014. This amount was to be disbursed from the security deposit made by appellant consequent to the dismissal of O.P.No.312 of 2015 by order dated 10.7.2019 passed by this court.



O.S.A.No.310 of 2019

WEB COPY

3. When appellant was enjoying this interim injunction and during the pendency of this appeal, respondent died. The appellant, therefore, filed applications for condoning the delay of 728 days in filing the application to set aside the abatement caused by the death of erstwhile respondent No.1; to set aside the abatement; and, to bring on record one N.Alice Grace Joseph as legal representative.

4. It is stated in the application that appellant was not aware that respondent had died. The application says respondent died on or about 27.5.2021. It is admitted in the application, as also in a memo that was filed on 2.7.2024 by the appellant, that on 21.2.2022 respondent's counsel informed the court that respondent had passed away. It is appellant's case that it could not bring on record the legal heir, which respondent's counsel informed appellant's counsel is one N.Alice Grace Joseph, because the details were not furnished. Counsel for appellant addressed a communication on 20.3.2022, 27.3.2024, 1.7.2024 and 2.7.2024 calling for details of the legal heirs of respondent, but there was no response. It is



O.S.A.No.310 of 2019

WEB COPY

also stated in the application that respondent's counsel informed that she was having difficulty in communicating with the said N.Alice Grace Joseph due to her old age and difficulty in communicating in the local language. However, what is glaring is the wide gap between 20.3.2022 and 27.3.2024, which is seven days more than two years. That would mean about 738 days.

5. Since, admittedly, the appeal against only respondent had abated, the appellant is seeking to set aside the abatement. As there is absolutely no explanation whatsoever for this 738 days' delay, the question of setting aside the abatement does not arise.

6. The Apex Court in ***Perumon Bhagvathy Devaswom v. Bhargavi Amma***<sup>1</sup> had summarised the principles applicable while considering applications for setting aside abatement. It is apposite to quote paragraph 13 of the said judgment hereunder:

*“13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:*

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<sup>1</sup> (2008) 8 SCC 321



WEB COPY



O.S.A.No.310 of 2019

- (i) *The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words “sufficient cause” in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*
- (ii) *In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
- (iii) *The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*
- (iv) *The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.*
- (v) *Want of “diligence” or “inaction” can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do*



WEB COPY



O.S.A.No.310 of 2019

*not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.”*

7. The Courts have held that a liberal construction so as to advance substantial justice has to be made, but what is important is sufficiency of a satisfactory explanation. In the case on hand, there is no explanation whatsoever, let alone a satisfactory explanation. In these circumstances, we see no reason to set aside the abatement.

8. We also note that appellant is a corporate entity and appellant could have deputed somebody, if it was really serious, to the address of respondent and made inquiries. That also has not been done. We will not be wrong in assuming that it was a deliberate inaction because appellant was enjoying an interim injunction against the respondent. Having lost in three rounds, appellant decided to let the matter lie.



O.S.A.No.310 of 2019

WEB COPY

Therefore, applications are dismissed. The appeal having abated be noted as disposed. A copy of this order be sent to the address of the deceased respondent for information. There shall be no order as to costs.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY,J.)

04.11.2024

Index : Yes/No  
NC : Yes/No  
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WEB COPY



O.S.A.No.310 of 2019

THE HON'BLE CHIEF JUSTICE  
AND  
SENTHILKUMAR RAMAMOORTHY,J.

(sasi)

O.S.A.No.310 of 2019

04.11.2024