



C.M.P(MD)No.15601 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.P(MD)No.15601 of 2023
in
C.M.A(MD)SR No.10323 of 2022

The Project Director,
National Highways No.45E and 220,
National Highways Authority of India
Having his Office at Plot No.3,
Suriya Towers, 2nd Floor, 1st East Street,
K.K.Nagar (Near Muthuvelrajan Hospital),
Madurai – 625 020.

... Appellant

Vs.

1.S.V.Gayathri

2.The Special District Revenue Officer /
Competent Authority for Land Acquisition,
(National Highways – 45E & 220),
Collectrate Buildings,
Theni.

... Respondents



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Prayer in CMA(MD)SR No.10323 of 2022: Appeal filed under Section 37(1) & 2 of Arbitration & Conciliation Act, 1996 to set aside the order made in Arbitration O.P.No.44 of 2017 dated 29.07.2021 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMP(MD)No.15601 of 2023: Petition filed under Section 5 of the Limitation Act, to condone the delay of 98 days in filing the CMA(MD)SR No.10323 of 2022.

For Petitioner : Mr.SU.Srinivasan
For Respondents : Mr.R.Govindaraj for R1

Mr.D.Sachikumar
Additional Government Pleader for R2

ORDER

(order of the Court was made by **Mr.P.VELMURUGAN, J.**)

This petition has been filed to condone the delay of 98 days in filing the CMA(MD)SR No.10323 of 2022.

2.The petitioner has stated in the affidavit that the first respondent's land was acquired for widening NH-45E&220, for which, the second respondent fixed compensation at the rate of Rs.32.15 p.sqm., for the land acquired in S.No.1954/2



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and Rs.2695/- per sqm., for the land acquired in S.No.1922/3B with an appreciation value of 10% and the same was received by the first respondent under protest. The first respondent being aggrieved with the compensation awarded by the second respondent, who is the competent authority, approached the District Collector being an Arbitrator, under Section 3G(5) of National Highways Act, 1956 and the same was taken on file as Arbitration Case No. 100/2016. The Arbitrator, by award dated 10.04.2017, rejected the claim of the first respondent and confirmed the award passed by the second respondent. Aggrieved by the Arbitration Award, the first respondent preferred an arbitration original petition in Arbitration O.P.No.44 of 2017 before the Principal District and Sessions Judge, Theni. The learned Principal District Judge partly allowed the Original Petition and set aside the award passed by the Arbitrator and enhanced the compensation. Challenging the same, the second respondent in the Arbitration Original Petition, has filed the present appeal in CMA(MD)SR No. 10323 of 2022. For filing the appeal, there is a delay of 98 days. The petitioner has stated various facts on merits of the case. As far as the delay is concerned, the reason stated by the petitioner is that the Principal District Judge, Theni, made an order on 29.07.2021 and copy was made ready on 20.09.2021. The present



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appeal under Section 37(1) and (2) of the Arbitration and Conciliation Act, 1996, could not be filed within 90 days. Hence, there is a delay in filing the CMA(MD)SR No.10323 of 2022.

3. On receipt of the notice, the first respondent appeared through a counsel and filed a detailed counter stating that no valid reason has been assigned by the petitioner except to state that the order was pronounced on 29.07.2021 and the order was made ready on 20.09.2021 and the delay has been occurred. But, the affidavit is very much silent and when the appeal was filed. The delay has to be explained properly for each and every day and no proper explanation was given in the affidavit. Therefore, there is no reason to condone the delay.

4. The learned counsel for the petitioner would submit that after obtaining copy of the order, the copy received by the PIU on 23.09.2021. Further, while the case was pending before the District Court, the Highway project was within the authority of Project Director of PIU, Madurai. In the meanwhile, the Dindigul project implementation Unit of NHAI was carved out of Madurai PIU of NHAI and came into being w.e.f 22.01.2018. It is further submitted that the post of



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Project Director of Dindigul was vacant, it was looked after by the project Director of Nagercoil as additional charge from 22.01.2018 to 01.09.2020. The post of Regional Officer of NHAI (Southern), Madurai, was also vacant from 26.04.2019 to 23.08.2021. Therefore, there was a delay in filing the appeal. The delay is inadvertent and neither wilful nor wanton. If the delay is condoned, no prejudice would be caused to the first respondent. The appellant has got a merit in the case. The Principal District Judge, invoking Section 34 of the Arbitration and Conciliation Act, cannot sit as the appellate Court and re-appreciate the evidence and enhance the award passed by the competent authority. The scope of Section 34 is very limited and the learned Principal District Judge cannot traverse beyond the scope of Section 34. The petitioner has got a good ground in filing the appeal. Due to inadvertent circumstances, the appeal was filed with delay and therefore, the delay is liable to be condoned.

5. The learned counsel for the first respondent, who is the contesting respondent, submitted that the petitioner has suppressed the material facts. Though the petitioner has stated only about the change of post. It is well settled proposition of law that as far as the delay is concerned, each day has to be



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explained, whereas, in this case, the petitioner has filed an affidavit, wherein apart from paragraph Nos.9 to 13, the petitioner has only spoken about the merit of the case and the petitioner has not explained the actual reason for the delay and therefore, the petition is liable to be dismissed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the first respondent's land was acquired for widening the National Highways (NH-45E&220) and the second respondent awarded compensation. Challenging the same, the first respondent approached the Arbitrator-cum-District Collector under Section 3(G)(5) of the National Highways Act, 1956. The Arbitrator, after hearing both sides and considering the materials, held that there is no legal aspect involved and the same was dismissed on 10.04.2017. Challenging the said dismissal order passed by the Arbitrator, the first respondent approached the Principal District Judge by filing an Arbitration Original Petition in Arbitration O.P.No.44 of 2017. The learned Principal District Judge set aside the order of the Arbitrator and enhanced the compensation.



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Challenging the said fair and decreetal orders passed by the Principal District Judge, the second respondent in the Arbitration Original Petition, namely, the Project Director has filed the present petition for condoning the delay of 98 days in filing the appeal CMA(MD)SR No.10323 of 2022.

8. It is seen that the petitioner has stated the reason in his affidavit regarding the delay in filing the appeal that after obtaining copy of the order, the copy received by the PIU on 23.09.2021 and the post of Regional Officer of NHAI post at Madurai(Southern) was also vacant and the appeal could not be filed within 90 days and therefore, there was a delay of 98 days in filing the appeal in CMA(MD)SR No.10323 of 2022.

9. A perusal of the order passed by the Principal District Judge shows that admittedly, the order was pronounced on 29.07.2021. However, the petitioner subsequently, filed a fresh copy application on 08.09.2021 and the stamps papers were called for on 13.09.2021 and the same were deposited on 14.09.2021 and the copy was made ready on 20.09.2021 and the same was delivered on 23.09.2021. Whereas, the appeal filed only on 24.02.2022. The appeal has to be



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filed within a period of 90 days. In case they are not able to file the appeal within a period of 90 days, they have to file the application to condone the delay by mentioning the reasons for the delay. If the reason given by the petitioner is satisfied by the Court, the Court can condone the delay. The condone the delay beyond 90 days is not an automatic one and the Court must satisfy that the valid reason has been assigned. Whereas, in this case, the petitioner has not given a valid reason except the change of post.

10. Further, a perusal of the records would show that admittedly, the order was pronounced on 29.07.2021, whereas, even the petitioner has not filed copy application immediately within the stipulated time and a perusal of the records, it is seen that the petitioner originally filed the copy application only on 08.09.2021, which has not been mentioned in the affidavit and in that application, the copy was delivered on 23.09.2021. Hence, there was a delay of 39 days. The petitioner has not filed the copy application immediately. The delay has not been properly explained for the purpose of getting the copy of the order, which delivered on 23.09.2021. The petitioner originally filed the copy application only on 08.09.2021 and the copy was also delivered on 23.09.2021. The appeal has been filed thereafter only on 24.02.2022.



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11. Each and every day of delay has to be explained. The petitioner has not given any reason as to why they have not filed the copy application in time and also why they have not filed the appeal even after obtaining the corrected copy of the order in time. Therefore, the delay has not been properly explained. In this regard, it is relevant to refer the case of the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) Rep. by Executive Engineer vs. Borse Brothers Engineers and Contractors Pvt. Ltd.***, reported in ***(2021)6 SCC 460***, wherein it has been held that the delay of beyond 90 days is only an exception and not a rule. The relevant para 58 is extracted hereunder:-

“58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in *Basawaraj v. Land Acquisition Officer*, (2013) 14 SCC 81, has held:



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9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party “has not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether



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the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336] , *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953] , *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 :



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AIR 2002 SC 1201] .”

12. In this case, the delay has not been properly explained and the reason also has not been given for delay in filing the copy application. Therefore, by relying the above said judgment, this Court finds that the petitioner has not made out the requirements that he has *bona fide* reason. Though the length of the delay is not the matter, but the reason is only the significance. If there is valid reason, the Court normally will not consider the length of the delay. If there is no reason, the Court could not consider the days of the delay. Though in this case, the delay in filing the appeal is 98 days, however, the petitioner has not given any particular about the delay and proper reason for the delay. Therefore, as held by the Hon'ble Supreme Court in 2021 (6) SCC 460, the delay is only an exception and not a rule. Further, it is well settled proposition of law that at the time of considering the application for the delay, the Court need not go into depth about the merits of the case. The affidavit filed by the petitioner has spoken almost upto 13th para only about the proceedings and also the merit of the case and only in 17th para, mentioned about the delay, however, there is no valid and acceptable reason given for the delay. It is well settled that while deciding an application for condonation



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of delay, merits of the case cannot go into and what has to be seen that as to whether sufficient cause has been shown by the applicant for condoning the delay in filing the appeal before the Court. Therefore, under these circumstances, this Court is not satisfied with the reason stated in the accompanying affidavit. Hence, the present petition filed to condone the delay of 98 days in filing the appeal in CMA(MD)SR No.10323 of 2022, is dismissed. No costs.

[P.V.,J.] [K.K.R.K.,J.]
24.10.2024

vsg
NCC : Yes/No
Index : Yes / No
Internet : Yes

To

- 1.The Principal District and Sessions Judge,
Theni.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

and

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