



C.M.P.(MD) No.2884 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.P.(MD) No.2884 of 2023

in

C.M.A. (MD) SR.No.14089 of 2023

The Project Director,
National Highways No.7,
National Highways Authority of India
83/1, SBI First Colony Extension,
(Near Gowri Krishna Hotel)
Bye Pass Road, Madurai - 625 016.

Now at:

Plot No.3, Surya Towers,
2nd Floor, 1st East Street,
K.K.Nagar, Madurai - 625 020.

... Petitioner/Appellant

Vs.

1.K.Sankar
S/o.Kanagavel

2.The District Revenue Officer /
Land Acquisition Officer,
(National Highways – 7),
Collectorate Buildings,
Madurai - 625 020.

... Respondents/Respondents



C.M.P.(MD) No.2884 of 2023

Prayer in C.M.P.(MD) No.2884 of 2023: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, 1963, to condone the delay of 406 days in filing the above C.M.A.(MD) SR.No.14089 of 2023.

Prayer in C.M.A.(MD) SR.No.14089 of 2023: Civil Miscellaneous Appeal filed under Section 37(1) & (2) of the Arbitration and Conciliation Act, 1996, to call for the records and set aside the order made in Arbitration O.P.No.41 of 2013 dated 31.10.2019 on the file of the Principal District Court, Madurai.

For Petitioner/Appellant : Mr.P.Karthick

For R1/R1 : Mr.N.Palanisamy

For R2/R2 : Mr.M.Muthumanikkam
Government Advocate

ORDER

This petition has been filed to condone the delay of 406 days in filing the above appeal.

2. In the affidavit filed in support of this petition, the petitioner has primarily stated that the learned Principal District Judge had modified the award passed by the learned arbitrator by reappraising the evidence, which is impermissible under Section 34 of the Arbitration and Conciliation Act, 1996; that they have a fair chance of success in the



C.M.P.(MD) No.2884 of 2023

appeal; that the delay was due to administrative reasons related to obtaining approval from higher authorities and securing concurrence regarding the court fees from National Highways Authority of India, New Delhi; that they are managing over 200 cases concerning identical issues that are pending before both the District Courts and this Court; and that therefore, sufficient cause was shown for condonation of delay.

3. The first respondent filed a counter opposing the petition, stating that the petitioner has not given sufficient cause for the delay. The learned counsel for the first respondent submitted that the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited***, reported in ***(2021) 6 SCC 460***, held that the objective of the Act is for speedy disposal of the case, and therefore, the time limit prescribed under the Act has to be strictly complied with, and that the delay can be condoned only in exceptional circumstances; and that this Court, by an order dated 27.08.2024, dismissed C.M.P.(MD) No. 11260 of 2023 in C.M.A.(MD) SR.No.25399 of 2023 filed by the appellant to condone the delay of 950 days caused due to the administrative delay.



C.M.P.(MD) No.2884 of 2023

4. This Court has given its anxious consideration to the pleading and the submissions made by the learned counsel on either side.

5. This petition for condonation of delay has been filed primarily on the ground that the order passed by the learned Principal District Judge is illegal inasmuch as the learned Judge has reappraised the evidence and modified the award, which is contrary to the settled position of law. The other reasons given by the petitioner are found in paragraph 3 of the affidavit, which reads as follows:

“3. It is submitted that thereafter, after due discussions with higher officials and counsel for NHAI, the order was sent for legal opinion and same was obtained on 04.01.2023. On studying the legal opinion along with the copy of the order and its financial implications, a report was sent to the Regional Officer, National Highways Authority of India, Madurai Region on 09.01.2023 seeking approval for preferring appeal. The Regional Officer had accorded his approval for preferring appeal vide communication dated: 04.01.2023. Accordingly, financial concurrence regarding Court fee was sought for from the National Highways Authority of India, New Delhi and the same was received only on 30.01.2023. Moreover, it is respectively submitted that more than 200 cases pertaining to identical issue is pending before the District Courts as well as more than 90 cases in which orders passed were also pending before this Hon'ble Court. For examination of each case and for collecting connected records



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C.M.P.(MD) No.2884 of 2023

from the Competent Authority for Land Acquisition has taken considerable time. Similar appeals filed by National Highways Authority of India were allowed by this Hon'ble Court.”

6. The question in the instant petition is not whether the order passed by the learned Principal District Judge, Madurai, impugned in the above C.M.A is illegal. The question is whether the petitioner has shown sufficient cause for filing the above appeal with a huge delay of 406 days.

7. The Hon'ble Supreme Court in ***Borse Brothers Engineers and Contractors Private Limited*** case, referred to *supra*, held 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.”



C.M.P.(MD) No.2884 of 2023

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8. From the above observations, it is clear that the delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 can be condoned only by way of an exception and not by way of rule. This Court is of the view that the reason given by the petitioner for the delay, which is extracted above in the paragraph 5 of this order, does not come under the exceptional circumstances warranting the condonation of delay. In any case, it is well settled that the administrative delay cannot be a ground for condonation of delay.

9. The learned counsel on either side cited Judgments of the Division Bench of this Court, wherein, in some cases, the delays were condoned and, in others, the delay petitions were dismissed. This Court, in the order dated 27.08.2024 passed in C.M.P.(MD) No.11260 of 2023 in C.M.A. (MD) SR.No.25399 of 2023, has discussed those Judgments and held that whether sufficient cause is shown or not would depend on the facts and circumstances of each case. Since sufficient cause has not been shown, this petition is liable to be dismissed.



C.M.P.(MD) No.2884 of 2023

WEB COPY 10. Accordingly, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, the C.M.A. stands rejected at the S.R. stage itself.

25.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:
The Principal District Judge,
Madurai.



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C.M.P.(MD) No.2884 of 2023

SUNDER MOHAN, J.

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C.M.P.(MD) No.2884 of 2023
in
C.M.A. (MD) SR.No.14089 of 2023

25.09.2024