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C.M.P.(MD) No.11260 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	19.08.2024
Pronounced on	27.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.P.(MD) No.11260 of 2023

in

C.M.A. (MD) SR. No.25399 of 2023

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

Presently at:-
Plot No.1, Aishwaryam Heights,
Indira Nagar, 1st Street
Sennamanaickenpatti (PO),
Thadikombu Road,
Dindigul – 624 004.

... Petitioner/Appellant

Vs.

1.M.Mallika Begam
W/o.Muthu Mohammed

2.The Special District Revenue Officer/
Competent Authority for Land Acquisition,
National Highways - 45E & 220,
Collectorate Buildings,
Theni.

... Respondents/Respondents



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Prayer in C.M.P.(MD) No.11260 of 2023: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, 1963, to condone the delay of 950 days in filing the above C.M.A.(MD) SR.No.25399 of 2023.

Prayer in C.M.A.(MD) SR.No.25399 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.66 of 2015 dated 23.02.2018 on the file of the Principal District and Sessions Judge, Theni.

For Petitioner/Appellant : Mr.P.Karthick

For R1/R1 : Mr.R.Govindaraj

For R2/R2 : Mr.V.Omprakash
Government Advocate

ORDER

This petition has been filed to condone the delay of 950 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 and Sessions Judge had modified the award passed by the learned arbitrator by reappraising the evidence, which is impermissible under Section 34 of the Arbitration and



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Conciliation Act, 1996; that they have a fair chance to succeed in the appeal; that the delay occurred due to the transfer of case files from the Project Implementation Unit (PIU) in Madurai, which was earlier handling the case, to the PIU in Dindigul, which was formed on 22.01.2018; that there was no full time Director in PIU, Dindigul; and that this Court may condone the delay in view of the judgment of the Hon'ble Supreme Court extending the limitation due to Covid-19.

3. The first respondent filed a counter vehemently opposing the petition, stating that except for the vaguely stating that there was an administrative delay, the petitioner has not given sufficient cause for the delay, and that the period of limitation cannot be extended due to COVID-19 since the petitioner was due to file the appeal even in the year 2018, and therefore prayed for dismissal of this condone delay petition.

4. The learned counsel for the petitioner relied on the order of the Hon'ble Division Bench of this Court in a batch of cases in **Project Director, National Highways Vs. N.Syed Levai Rowther and another** in C.M.P.(MD) No.14864 of 2023 in C.M.A.(MD) SR.No.2094 of 2023 etc. dated 26.06.2024, and the order dated 13.12.2023 passed by the



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learned Single Judge of this Court in C.M.P.(MD) No.11262 of 2023 in C.M.A.(MD) SR.No.25400 of 2023, in support of his submission that the award passed under Section 34 of the Arbitration and Conciliation Act, 1996, which is illegal, cannot be legitimized by dismissing the petition for condonation of delay and therefore, this petition for condonation of delay has to be allowed.

5. The learned counsel for the first respondent, per contra, relied on the following decisions of the Hon'ble Division Bench of this Court:

- i. **The Project Director, National Highways Vs. R.Karupiah and another, etc.,** in C.M.A.(MD) No.104 of 2019 batch dated 08.02.2024.
- ii. **The Project Director, National Highways Vs. M.Murugan and another, etc.,** in C.M.P.(MD) No.1827 of 2023 in C.M.A.(MD) SR.No.66398 of 2022 batch dated 06.06.2023.
- iii. **The Project Director, National Highways Vs. R.Jeyamani and another, etc.,** in C.M.P.(MD) No.10864 of 2022 in C.M.A.(MD) SR.No.45045 of 2022 batch dated 21.03.2024.



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6. This Court has given its anxious consideration to the pleading and the submissions made by the learned counsel for the petitioner, the learned counsel for the first respondent, and the learned Government Advocate for the second respondent.

7. This petition for condonation of delay has been filed primarily on the ground that the order passed by the learned Principal District and Session 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 14 of the affidavit, which reads as follows:

14. I humbly submit that the Learned District and Sessions Judge made the order on 23.02.2018 and copy was made ready on 05.06.2018 and the present Appeal under section 37 of the act ought to have been filed within 90 days from thereon. Inadvertently, there is delay in filing the present CMA. Initially, this project was dealt by PIU, Madurai therefore the files relating to the court case was with the PIU, Madurai and a new PIU was formed at Dindigul on 22.01.2018 earlier. The files relating to PIU, Dindigul was received from the existing PIU, Madurai and there was some delay in receiving the files. Moreover, the newly formed PIU, Dindigul was functioned without full time Project Director from 22.01.2018 to 01.09.2020 and during that time an incharge Project Director, Nagercoil was functioning with additional



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charge. Simultaneously, the Regional officer, Madurai of NHAI was also vacant from 26.04.2019 to 23.08.2021. Moreover, the Hon'ble Supreme Court's suo moto orders in extending limitation due to COVID-19 made in Sua Moto Writ (Civil) No. 3 of 2020 vide order dated 23.03.2020, 08.03.2021 and 23.09.2021 and order dated 10.01.2022 to exclude the period from 15.03.2020 till 28.02.2022 for computing limitation in filing suit, appeal, application or proceedings in judicial and quasi judicial forum. Therefore, the delay may be condoned for the above stated reasons.

8. The question in the instant petition is not whether the order passed by the learned District and Sessions Judge, Theni, 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 950 days.

9. The relevant portion of the affidavit that has been extracted above would show that the delay has occurred due to the fact that a new Project Implementation Unit (PIU) was formed at Dindigul and there was a delay in getting files from PIU at Madurai; and that PIU at Dindigul did not have a full-time Project Director from 22.01.2018 to 01.09.2020. This is hardly a sufficient cause, which can be justified for the delay. The administrative delay cannot be an excuse for filing the belated appeal.



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10. The extension of limitation due to COVID-19 would not arise since the appellant was due to file the appeal even in 2018. In similar circumstances, the Hon'ble Division Bench of this Court in **R.Jeyamani** case, referred to *supra*, held that the administrative reason alone cannot be a reason for condoning the delay and that merely because there is a subsequent change in law due to the verdict of the Hon'ble Supreme Court, the delay cannot be condoned.

11. The other Division Bench of this Court, in **M.Murguan** case, referred to *supra*, held that the change in law by itself cannot be a reason to condone the delay. A similar view was taken by another Division Bench of this Court in the case of the **Project Director Vs. P.Rajaguru and another** in C.M.A.(MD) SR.No.53941 of 2023 and C.M.P.(MD) No. 1657 of 2024 by an order dated 13.03.2024.

12. Similarly, in a batch of cases in **R.Karuppiah** case, referred to *supra*, this Court dismissed the condone delay petitions that were filed, citing almost the very same reasons.



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WEB COPY 13. It is also brought to the notice of this Court that another Division Bench of this Court in **N.Syed Levai Rowther** case, referred to *supra*, had condoned the delay, stating that the order which is unsustainable in law is liable to be set aside and the delay can be condoned for that reason.

14. Whether a sufficient cause has been shown has to be examined in light of the facts and circumstances of each case. As stated earlier, this Court finds that in this case, the delay has not been explained sufficiently. The vague reason for the delay stated in paragraph 14 of the affidavit filed in support of this petition, which is extracted above, cannot be construed as sufficient cause. This petition is therefore liable to be dismissed and is accordingly dismissed. No costs. Consequently, the C.M.A. stands rejected at the S.R. stage itself.

27.08.2024

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

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Copy To:

The Principal District and Sessions Judge,
Theni,
Theni District.



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SUNDER MOHAN, J.

JEN

Pre-Delivery order made in

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in

C.M.A. (MD) SR. No.25399 of 2023

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