



C.M.P.(MD) No.1855 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.P.(MD) No.1855 of 2023

in

C.M.A. (MD) SR. No.66899 of 2022

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.K.Renuga
W/o.S.Kayambu

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.1855 of 2023: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, 1963, to condone the delay of 563 days in filing the above C.M.A.(MD) SR.No.66899 of 2022.

Prayer in C.M.A.(MD) SR.No.66899 of 2022: 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.47 of 2016 dated 07.01.2019 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.M.Muthumanikkam
Government Advocate

ORDER

This petition has been filed to condone the delay of 563 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 of success 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 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 mentioning the same reasons.



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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 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 17 of the affidavit, which reads as follows:

“17.It is respectfully submitted that the impugned order was passed by the Lower Court on 07.01.2019 and the said order was made ready on 13.03.2019 and received by the PIU 14.03.2019. It is submitted that while the case was pending before the District Court, the Highways project was within the authority of Project Director of PIU, Madurai. In the meanwhile, the Dindigul Project Implementation Unit of NHAI was carved out Madurai PIU of NHAI and came into being w.e.f. 22.01.2018. The files pertaining to newly related Dindigul Unit was received from Madurai PIU in different dates of February 2018. It is further submitted for some period, as the post of Project Director Dindigul was vacant, it was looked after by the Project Director of Nagercoil as additional charge from 22.01.2018 to 01.09.2020. Full time Project Director was appointed to the newly carved out office for PIU, Dindigul wef 02.09.2020. Similarly, the (southern) Regional Officer of NHAI post at Madurai was also



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vacant from 26.04.2019 to 23.08.2021. Due to all these reasons, the appeals could not be filed by the Petitioner/Appellant immediately within the prescribed period of limitation.”

6. 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 563 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.”



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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.



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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

JEN

Copy To:

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



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SUNDER MOHAN, J.

JEN

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in
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