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Arb. O.P. (Com. Div.) No.361 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.361 of 2024

ICICI Securities Limited,
Shree Sawan Knowledge Park, Ground Floor,
Plot No.D 507, T.T.C. Industrial Area,
MIDC, Turbhe, Near Juinagar Railway Station,
Navi Mumbai, Maharashtra - 400 705.

... Petitioner

Vs.

Kariabettan Sugumar,
B-9, Trister Apts, 657, Avinashi Road,
Coimbatore - 641 037.

... Respondent

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 21.09.2023 bearing No.NSECRO/0027643/21-22/ISC/IGRP/ARB/APPL passed by the Appellate Panel of Arbitrators in its entirety and to direct the respondent to pay the cost.

For Petitioner : Mr. H. Ilangovan

For Respondent : Mr. Naveen Kumar Murthi



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ORDER

A preliminary issue has been raised by the learned counsel for the respondent that this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 is not maintainable for the following reasons:

a) The appeal before the appellate Tribunal constituted as per the provisions of the statutory bye-laws, preferred by the petitioner, aggrieved by the award passed by the Arbitral Tribunal, has been filed beyond the period of limitation prescribed under the National Stock Exchange bye-laws;

b) The appeal was filed by the petitioner before the Appellate Tribunal beyond the prescribed period of limitation, since the appeal ought to have been filed within 30 days from the date of passing of the Arbitral Award by the Arbitral Tribunal;

c) The petitioner has got two options to challenge the Arbitral Award passed by the Arbitral Tribunal under the statutory bye-laws. Either the petitioner can directly file a petition under Section 34 of the Arbitration and Conciliation Act, 1996 before this Court challenging the Arbitral Award or



file the statutory appeal before the Appellate Tribunal as prescribed under the statutory bye-laws;

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d) Having chosen the option to file the statutory appeal before the Appellate Tribunal and having filed the statutory appeal beyond the period of limitation and the Appellate Tribunal, having dismissed the appeal, filed by the petitioner on the ground of limitation, the question of entertaining this petition under Section 34 of the Arbitration and Conciliation Act, 1996 by this Court does not arise.

2. According to the respondent, the appeal remedy confers more rights to the party if aggrieved by the Arbitral Award, whereas the scope of Section 34 under the Arbitration and Conciliation Act, 1996 for interference is limited. According to the respondent, since the petitioner exercised the option to file the appeal before the Appellate Tribunal and since the Appellate Tribunal has also dismissed the appeal on the ground of limitation, the present petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, aggrieved by the order of the Appellate Tribunal as well as the Arbitral Tribunal, is not maintainable. There is no provision to condone the delay as per the statutory bye-laws for filing an appeal. Since



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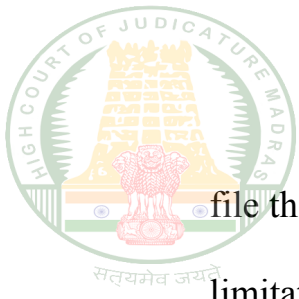
the appeal has been filed beyond the period of 30 days from the date of receipt of a copy of the Arbitral Award, the question of condoning the delay by the Appellate Tribunal does not arise.

3.Learned counsel for the respondent also drew the attention of this Court to the FAQ (Frequently answered questions) published by the National Stock Exchange and would submit that it clearly stipulates that there is no power to condone the delay in filing the statutory appeal as per the statutory bye-laws.

4.On the other hand, the learned counsel for the petitioner would submit as follows:

a)The claims of the respondent against the petitioner before the Arbitral Tribunal is hopelessly barred by law of limitation;

b)Under the statutory bye-laws of the National Stock Exchange, any party aggrieved by the Arbitral Award has got the power to approach both this Court under Section 34 of the Arbitration and Conciliation Act, 1996 as well as the Appellate Tribunal constituted under the statutory bye-laws. According to him, the contention of the respondent that once the option to



file the statutory appeal is exercised and the same is dismissed on account of limitation, this petition filed under Section 34 of the Arbitration and Conciliation Act is not maintainable is incorrect;

c)Any appellate remedy provided under a statute enables a party to seek for condonation of delay in filing the appeal under Section 5 of the Limitation Act;

5.According to the learned counsel for the petitioner, the petitioner was not granted an opportunity to file a condone delay petition as the Appellate Tribunal, without granting such an opportunity, has dismissed the appeal outright. He would submit that the Appellate Tribunal ought to have returned the appeal in case the appeal was filed beyond the prescribed time. In the instant case, he would submit that the Appellate Tribunal has dismissed the appeal, without granting an opportunity for the petitioner to file a condone delay petition. Since a plea has been taken in this petition that the arbitral claim of the respondent against the petitioner is hopelessly barred by law of limitation, such a plea being a question of law can be raised before this Court under Section 34 of the Arbitration and Conciliation Act, 1996.



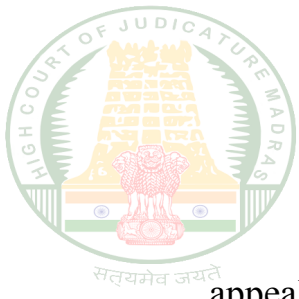
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Discussion:

6. Admittedly, the petitioner had not challenged the award of the arbitral Tribunal before the Appellate Tribunal on time. The appeal filed before the Appellate Tribunal was filed with a delay of 56 days. The said fact is also not disputed by the learned counsel for the petitioner. The Appellate Tribunal has dismissed the appeal filed by the petitioner on the ground that the said appeal is barred by limitation. Admittedly, no condone delay application was filed by the petitioner before the Appellate Tribunal, seeking to condone the delay of 56 days in filing the statutory appeal.

7. The petitioner has contended before this Court that sufficient opportunity ought to have been granted by the Appellate Tribunal to rectify the defects in the appeal filed by the petitioner by enabling the petitioner to file a condone delay petition seeking to condone the delay in filing the statutory appeal. According to the petitioner, without granting any opportunity, the Appellate Tribunal has dismissed the appeal on the ground that the said appeal is barred by limitation.



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8. The learned counsel for the petitioner would submit that if the appeal was returned by the Appellate Tribunal on account of the fact that the appeal was filed beyond the period of limitation, the petitioner would have filed an application, seeking to condone the delay in filing the appeal. But, that opportunity was lost, as seen from the order passed by the Appellate Tribunal.

9. The learned counsel for the petitioner also relied upon the following authorities, in support of his contentions:

a) The decision rendered by a learned Single Judge of this Court dated **21.09.2020** passed in ***O.P.No.594 of 2009*** in the case of ***Mr. C. S. Sivanandan (Constituent) Vs. M/s. Karvy Stock Broking Ltd. (Trading Member) and Another*** and would submit that in similar circumstances, this Court in the aforesaid order had remanded the matter back to the Appellate Tribunal for fresh consideration since the statutory appellate remedy was not exercised by the petitioner, who filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 without exercising the appellate remedy available under the Statutory bye-laws. However, the law is now well settled that under Section 34 of the Arbitration and Conciliation Act,



1996, this Court does not have the power to remand the matter back to the Appellate Arbitral Tribunal for fresh consideration. In view of the well settled law, the decision relied upon by the learned counsel for the petitioner in **Mr. C. S. Sivanandan (Constituent)** case referred to supra, has no relevancy.

b) The learned counsel for the petitioner also drew the attention of this Court to a Division Bench Judgment of the Bombay High Court in the case of **Way2wealth Brokers Pvt. Ltd. Vs. C. B. Sharma** reported in 2016 (3) Mh.L.J. 695. The said decision also got no bearing to the facts of the instant case since in the instant case, the petitioner did not file an application, seeking to condone the delay in filing the statutory appeal before the Appellate Tribunal, whereas in the Division Bench Judgment of the Bombay High Court, the petitioner therein had filed an application seeking to condone the delay in filing the statutory appeal.

10. Ignorance of law is no excuse. In fact, the prayer sought for in the appeal filed before the Appellate Tribunal by the petitioner is surprising as in the said prayer, the appeal seeks for dismissal of the petitioner's own



appeal. Admittedly, no amendment was also made to the grounds of appeal by the petitioner before the Appellate Tribunal to rectify the mistake.

11. The learned counsel for the respondent during the course of his submissions, has submitted that having chosen to file the statutory appeal before the Appellate Tribunal and since the said statutory appeal was filed beyond the prescribed period of limitation and since the Appellate Tribunal has dismissed the appeal on the ground of limitation, the petitioner cannot file this petition under Section 34 of the Arbitration and Conciliation Act, 1996. In support of the said contention, the learned counsel for the respondent also relied upon a Judgment of the Honourable Supreme Court in the case of ***Centrotrade Minerals and Metals INC Vs. Hindustan Copper Ltd.*** reported in 2017 (2) SCC 228 for the proposition that once the party has agreed to go for two tier arbitration, he cannot wriggle out of the same by questioning the authority of the Appellate Tribunal to dismiss the appeal on the ground of limitation.

12. In the instant case, it is not in dispute that the petitioner had exercised the option of filing statutory appeal as per the statutory bye-laws



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and they had also exercised the same. It is also not in dispute that the petitioner is a stock broker regularly dealing with security transactions.

They have a large clientele. One of the clients of the petitioner is the respondent herein. Being a regular share broker involved in security transactions, they would have known the procedure for filing any statutory appeal under the statutory bye-laws, if aggrieved by any award passed by any Arbitral Tribunal against them. Therefore, ignorance of law is no excuse and the petitioner cannot claim that they were not put on notice by the Appellate Tribunal about the fact that their appeal is barred by limitation. As a share broker, having a large clientele, they cannot blame the Appellate Tribunal for not having informed them that the appeal cannot be entertained on the ground that the appeal is barred by limitation.

13. Having chosen to file the appeal instead of directly approaching this Court under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award, the petitioner cannot wriggle out of the two-tier arbitration, by stating that they were not given an opportunity by the appellate Tribunal to prosecute the appeal by filing the condone delay application, seeking to condone the delay in filing the statutory appeal as



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per the bye-laws. In fact, as seen from the order of the Appellate Tribunal, the appeal was filed by the petitioner with a delay of 56 days and was filed on 06.06.2023 and the same was dismissed on 21.09.2023. Atleast, during the pendency of the appeal, the petitioner as a share broker of repute, ought to have known that the appeal has been filed beyond the period of limitation. Only after the appeal got dismissed by the Appellate Tribunal, the petitioner has raised grounds before this Court, blaming the Appellate Tribunal for not informing the petitioner about the delay, which cannot be entertained by this Court in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

14. The claim made by the respondent against the petitioner before the Appellate Tribunal relates to the recovery of the excess brokerage charges collected by the petitioner from the respondent. Infact, pursuant to the passing of the award by the Arbitral Tribunal, the respondent has also received the payment as per the arbitral award. The said fact is also not disputed by the learned counsel for the petitioner. The scope of Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. Even in case of delay beyond the maximum period of four months, this Court cannot



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entertain any petition under Section 34 of the Arbitration and Conciliation Act, 1996. While that is the settled position, the question of entertaining this petition under Section 34 of the Arbitration and Conciliation Act, 1996, that too when the petitioner had not filed the statutory appeal before the Arbitral Appellate Tribunal on time is not maintainable that too when the petitioner had chosen not to file any condone delay application, seeking to condone the delay, before the Appellate Tribunal.

15. For the foregoing reasons, this Court does not find any merit in this petition. Accordingly, this petition is dismissed. No Costs.

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Index : Yes/ No
Speaking Order : Yes/ No
Neutral Citation Case: Yes
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