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CMP No.13747 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

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THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

CMP No.13747 of 2024

and

OSA (CAD) No.67920 of 2024

1.Tamil Nadu Tourism Development Corporation Ltd
Rep. by its Chairman and Managing Director,
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai

2.Tamil Nadu Tourism Development Corporation Ltd
Rep. by its General Manager
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai

applicants

Vs

M/s.Tradex Shipping Company Pvt Ltd
Rep by its Managing Director,
Captain R Venkataraman
Having its Registered Office at,
No.77, Big Maniyakara Street,
Chengalpet-603 001 and

Administrative off at
No.24, Bagawantham Street,
T.Nagar Chennai

Respondent



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CMP No.13747 of 2024 filed to condone the delay of 664 days in filing the original side appeal.

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OSA (CAD) No.67920 of 2024 appeal sought to be filed challenging the order dated 09.07.2021 in A.No.950 of 2021 in O.P.Diary No.152406 of 2019.

For applicants: Mr.R.Raman Laal,
Additional Advocate General
for M/s. C.H.Vinay Datha

For Respondent: Ms.Vasudha Thiagarajan
for Mr.R.Thiagarajan

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This appeal seeks to impugn an order dated 09.07.2021, passed by learned Single Judge, rejecting an application to condone delay of 24 days in filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996').

2. Applicants had filed a condonation of delay application in filing a petition under Section 34 of the Act of 1996, challenging an arbitral award dated 08.03.2019, passed by a sole arbitrator. As the learned Single Judge was not satisfied with the explanation for the delay, the application was



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rejected. Against that order, this appeal is preferred and condonation of delay application has been filed. This time, delay is of 664 days.

3. Learned counsel appearing for applicants stated that the explanation for the delay is found in paragraph 12. It is suggested that due to unforeseen and compelling reasons beyond the control of applicants, there has been a delay of 664 days. The so called unforeseen and compelling reasons are :

“a) The certified copy of the dismissal order dated 09.07.2021 could only be obtained on 30.04.2022 after prolonged follow-ups owing to COVID-19 restrictions on court functioning causing procedural delays.

b) The administrative transition after state Government elections in May 2021 lead to the departure of key officials previously handling the arbitration records, severely constraining subsequent efforts to comprehensively trace documentation essential for filing the statutory appeal.

c) Non-traceability of essential case records and unavailability of departed officials having intricate case knowledge substantially impaired access necessary to present accurate procedural history, which is imperative to ensure fairness.

d) The cumulative impact of highlighted exceptional circumstances prejudicially constrained the petitioner despite bonafide efforts. Condoning delay would prevent the failure of justice.”



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4. In the affidavit in reply filed through one Capt.R.Venkataraman and affirmed on 06.01.2025, it is stated that respondent had filed two execution petitions before this Court and notice was given to applicants about the filing of the execution petitions. It is also stated that applicants have been consistently appearing before the Executing Court since 01.04.2021 and seeking time to file counter-affidavit. While the execution petitions were pending, petition under Section 34 of the Act of 1996 was filed and the impugned order came to be passed. It is also alleged in the affidavit in reply that on numerous occasions, the applicants did not even appear before the executing Court and therefore, a copy of the execution petitions was served on applicants again on 20.02.2021, 03.12.2021 and 05.01.2022, and applicants had sought time to file their counter. It is therefore suggested that the attempt is only to prolong the execution petitions and honouring the award passed against the applicants.

5. There is no rejoinder to this affidavit.

6. Apart from the bald averments made in the affidavit as quoted above, there is nothing to indicate that there were any compelling reasons



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beyond the control of applicants.

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7. The Apex Court in the case of **Chief Post Master General & Ors. Versus Living Media India Ltd. & Anr.**¹ was considering an application to condone the delay of 427 days.

8. The Apex Court held that the law of limitation binds everybody equally, including Government, and the defence of impersonal machinery and the inherited bureaucratic methodology cannot be accepted in view of modern technology being used and available. Absence of diligence cannot be a reason to condone delay as condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. In fact, the Court went on to hold that the usual explanation that file was kept pending due to procedural red-tape cannot be accepted.

9. In our view, the so called unforeseen and compelling reasons only indicate the attitude of indifference of applicants in protecting its interests. The affidavit appears to be one of those stereotyped affidavits that requires criticism from this Court. It is quite obvious that applicants do not seem to

1 (2012) 3 SCC 563



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give any importance to the need for promptitude even where it affects its own interest.

10. Though normally we would have given an opportunity, even if the party did not ask, to file a further and better affidavit to condone delay, we are not inclined to grant at this stage. The reason being, even while challenging the award under Section 34 of the Act, there was a delay, and the application for condonation of delay was rejected. An appeal against that order is delayed by 664 days, which reflects, as noted above, the attitude of indifference of applicants. The applicants, it is rather obvious, do not attach any importance to the need of promptitude. Moreover, in the affidavit filed in support, not even an attempt is made to mention as to when the application for a certified copy was filed. It simply states the certified copy of the dismissal order dated 09.07.2021 could only be obtained on 30.04.2022, after prolonged following-ups, owing to Covid-19 restrictions.

11. Courts were functioning and if applicants had been prompt, we are sure, applicants would have given the date on which the application was



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made, than make a bald statement, as has been made in the affidavit.

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12. Applicants also did not attempt to explain which are the records that were non-traceable. They would have certainly had a copy of the petition filed under Section 34 of the Act of 1996 and what was required to be added was only a copy of the impugned order and nothing else in filing the appeal. Therefore, the so called unforeseen and compelling reasons which cannot be improved for reasons mentioned above, made us not even to offer or suggest to applicants to file a better affidavit.

13. Application dismissed. Consequently appeal stands rejected at SR stage.

14. Ms.Vasudha Thiagarajan is pressing for cost. She is justified.

15. In our view, this attempt by Government agencies not to honour arbitral awards and prolong litigations had to be condemned.



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16. We impose a cost of Rs.1,00,000/- (Rupees One lakh only) on the applicants, which amount shall be paid within two weeks, by way of cheque drawn in favour of the advocate on record for respondent.

17. If not paid, this amount can also be added to the award amount and executed.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMARRAMAMOORTHY, J.)

20.01.2025

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