



WEB COPY

Appln.Nos.4872 and 4874 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**Appln.Nos.4872 and 4874 of 2025
in
Arb.O.P.(Com.Div.)SR.No.95844 of 2023
and
Arb.O.P.(Com.Div.)SR.No.95844 of 2023**

1. M.Gajendran
Old No.116, New No.114
Singanna Chetty Street
Chintadripet, Chennai-600 002.
2. M.G.Vasanth Kumar
Old No.116, New No.114
Singanna Chetty Street
Chintadripet, Chennai-600 002.applicants / petitioners
in both applications / original petition

Vs.

1. M/s.Everest Blue Metals
S.F.No.2523
Veppilai Mettur (Vili), V.Kongarapatti (PO)
Kadaiyampatti (th)
Salem District - 636 351.
2. R.Munirathinam
D.No.199, Thindalanoor (Vill)



Kadathur (PO), Pappireddipattay (Tk)
Dharmapuri - 635 303.

3.

M.Raja
D.No.313-6/67
Jalliyur (Vill), Regadahalli (PO)
Pappireddipatty (Tk)
Dhamapuri - 635 303.

...Respondents / Respondents
in both applications / original petition

Prayer:

Arbitration Original Petition filed under Section 34(2)(b)(ii) read with explanation (iii) and Section 34(2A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 27.04.2023 passed by V.Paul Das in its entirety to which it is challenged and to direct the respondents to pay the costs.

Appln.No.4872 of 2025 filed under Order XIV Rule 10(1) of High Court Original Side Rules, praying to condone the delay of 690 days in representing the Arb.O.P(Com.Div)D.No.95844 of 2023.

Appln.No.4874 of 2025 filed under Order XIV Rule 10(1) of High Court Original Side Rules, praying to condone the delay of 690 days in paying deficit Court fee of Rs.1,01,000/- in Arb.O.P(Com.Div)D.No.95844 of 2023.



WEB COPY

Appln.Nos.4872 and 4874 of 2025



For applicants / petitioners : Mr.Gopalakrishnan T.C

For respondents / respondents : Mr.D.Shivakumaran

COMMON ORDER

These applications came up for hearing yesterday i.e., on 22.10.2025 and this Court passed an order in open Court dismissing both the applications. After the order was passed, the learned counsel for applicants made a mention during lunch recess to post these applications under the cause list caption 'FOR CLARIFICATION' on the ground that certain important judgments were not taken into consideration when the final order was passed. Based on the request made by learned counsel for applicants, the matter was directed to be listed under the cause list caption 'FOR CLARIFICATION' today and this Court heard learned counsel appearing on either side *in extenso*.

2. A.No.4872 of 2025 has been filed to condone the delay of 690 days in representing the papers. A.No.4874 of 2025 has been filed to condone the delay of 690 days in paying deficit Court fee of Rs.1,01,000/-.



WEB COPY

3. When these applications came up for hearing on 06.10.2025, this

Court passed the following order:

"These applications have been filed for condoning the delay of 690 days in re-presenting the papers and in paying the Court fee of Rs.1,01,000/-, respectively.

2. The learned counsel for applicants submitted that the award is dated 27.04.2023 and that the original petition was filed before this Court on 24.07.2023. However, the counsel who filed the petition had virtually cheated the clients and no Court fee was paid at the time of filing. The learned counsel for applicants further submitted that the papers were ultimately re-presented on 25.04.2025 with proper Court fees and by assigning proper reasons. The learned counsel also submitted that insofar as the delay in re-presentation is concerned, it will not come within the scope of Section 34(3) of the Arbitration and Conciliation Act. To substantiate the same, the learned counsel for applicants relied upon the judgment of the Apex Court in the case of Northern Railway v. Pioneer Publicity Corporation Private Limited, (2017) 11 SCC 234.

3. There can be no controversy regarding the delay in re-presentation, which obviously will not come within the scope of Section 34(3) of the Arbitration and Conciliation Act. However, the main issue that has to be considered by this Court is as to whether the so-called filing that happened on 24.07.2023, can be construed as a filing at all, since no Court fees were paid while filing the petition. If ultimately the proper filing had taken place at the time of re-presentation on 25.04.2025, this is much beyond the period of 120 days, beyond which this Court cannot condone the delay. When this was brought to the notice of the learned counsel for applicants, the learned counsel sought for some time to make his submissions.

4. Post these applications under the same caption on 08.10.2025."



WEB COPY

4. Both the applications were once again listed for hearing on 13.10.2025 and the following order came to be passed:

"Pursuant to the earlier order passed by this Court, learned counsel for the applicant has filed additional typed-set of papers. Learned counsel submitted that the erstwhile counsel had originally received a sum of Rs.1,70,000/- from the applicants and thereafter, he received another sum of Rs.50,000/- from the applicants. However, at the time of filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996, the erstwhile counsel had affixed stamp duty for a sum of Rs.10/-. The balance stamp duty for Rs.99,990/- was affixed only when the papers were represented on 27.03.2025. Learned counsel, therefore, submitted that originally when the petition was filed, a sum of Rs.10/- was affixed as stamp duty and it is not a case of 'Nil' stamp duty as was observed by this Court in the earlier order.

2. Learned counsel appearing on behalf of the respondents submitted that they had filed a memo for search and it was ascertained that when the petition was originally filed on 24.07.2023, the award itself was not filed. The award came to be filed only on 23.06.2025. Learned counsel has filed list of dates and events to substantiate that effective filing of the petition has taken place beyond the period of 120 days and there is no scope to condone the delay in this case.

3. Learned counsel for applicants seeks for some time to clarify as to whether the award copy was filed along with the petition when the petition was originally filed on 24.07.2023.

4. The return memo dated 26.07.2023 signed by the Joint Registrar (O.S.) at Sl.No.20 shows that the award was not filed. Hence, Registry shall also prepare a note and submit before this Court and inform this Court as to whether any award was filed at the time of original filing of the petition on 24.07.2023.

5. Learned counsel for applicants shall also give necessary clarification.



Post these applications finally under the same caption on 22.10.2025."

WEB COPY

5. Pursuant to the above order, the Registry has placed a report before this Court and for proper appreciation, the same is extracted hereunder:

"It is most respectfully submitted that the above said Application Nos.4872 & 4874 of 2025 in Arbitration Original Petition Dr.No.95844 of 2023 were listed before your Lordship on 13.10.2025. Your Lordship directed the Registry to prepare a note and submit before this Court and inform this Court as to whether any award was filed at the time of original filing of the petition on 24.07.2023.

It is further submitted that the original petition was filed on 24.07.2023 without the original Arbitration Award dated 27.04.2023 and the Registry has returned the papers with an endorsement on 26.07.2023 copy of the Award duly certified by the Arbitrator or Original Award to be filed (Award not filed) and again the Registry returned the papers on several times on 08.04.2025, 28.04.2025, 11.07.2025, 11.08.2025 and 09.09.2025 to comply with the defects.

It is further submitted that on verification of the records, the counsel for the petitioner has filed the original Arbitral Award on 23.06.2025 in D.No.22399 of 2025 and the copy of the Arbitral Award along with typed set of papers filed by the counsel for the petitioner on 13.08.2025 in D.No.32179 of 2025."

6. The report of the Registry shows that the award dated 27.04.2023 came to be filed only when papers were represented on 23.06.2025 and a copy of the award was not even filed when the petition was originally filed



on 24.07.2023.

WEB COPY

7. When the report forwarded by the Registry was pointed out to the learned counsel for applicants, learned counsel for applicants submitted that the copy of the award was filed when the petition was originally filed on 24.07.2023. To substantiate the same, the learned counsel relied upon copy of the petition and grounds that were raised in that petition. The learned counsel pointed out those grounds where specific reference was made in the award and certain paragraphs in the award which were questioned by the applicants as perverse. The learned counsel, therefore, submitted that without the copy of the award being available, learned counsel who originally filed the petition could not have referred to specific paragraphs in the award. Therefore, the copy of the award was in fact filed when the petition was originally filed on 24.07.2023.

8. This Court posed a question to the learned counsel for applicants as to whether filing of a petition with copy of the award will suffice and will satisfy the requirement of a proper presentation of the petition.



WEB COPY

9. In reply to the above query posed by this Court, the learned counsel relied upon the judgment of Hon'ble Division Bench of Delhi High Court in ***Delhi Urban Shelter Improvement Board Vs. Lakhvinder Singh*** reported in ***2017 SCC OnLine Del 9810*** and learned counsel placed specific reliance upon paragraph No.14 which is extracted hereunder:

"14. Section 31(5) of the Act contemplates the delivery of a signed copy of the arbitral award to be delivered to each party, and Section 34(3) states that an application for setting aside of the award may not be made, inter alia, after three months have elapsed from the date on which the party making the application had "received" the arbitral award. DUSIB has argued that the copy of the award that had been received was not a signed copy of the award, and as such, the limitation had not been triggered, and that the single Judge had erred in holding the same to be barred by limitation. However, the covering letter enclosing the arbitral award dated 14.03.2016 was signed in original and also bore the stamp of the arbitrator. The copy of the award enclosed with the letter was stamped with the name of the arbitrator in original on every page. The stamp was, plainly, to authenticate the copy of the award and the DUSIB did not dispute that the copy of the award authenticated by the Arbitrator was received by DUSIB; its only contention was that the copy of the award was not signed in the handwriting of the arbitrator."

10. The learned counsel further submitted that even Arbitration Rules of our High Court does not mandate filing of original award. In view of the



same, it was contended that where the petition is filed with copy of the award, it has to be construed as proper presentation since at the time of representation of papers, original award was filed and it was exact replica of copy of the award that was originally filed by the petitioner at the time of original presentation on 24.07.2023.

11. Per contra, learned counsel for the respondents submitted that proper filing of petition will arise only when the original award is filed along with the petition. The learned counsel submitted that such proper filing had taken place in this case only on 23.06.2025 and therefore, non-filing of the arbitral award along with the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) makes the petition itself non-est in the eye of law. It was therefore, contended that limitation under Section 34(3) of A and C Act will continue to run in spite of such filing made by the petitioners originally on 24.07.2023.

12. The learned counsel, in order to substantiate his submission relied upon by the Full Bench of Delhi High Court in ***Pragati Construction Consultants Vs. Union of India and another*** reported in ***2025 (3) CTC 433***



and relevant portion is extracted hereunder:

"97. We summarise our answer to the Reference, as under:

a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would make the said application liable to be treated and declared as non-est, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;

b) Mere non-filing of the Statement of Truth or a defect in Statement of Truth being filed, that is, including with blanks or without attestation, would not ipso facto, make the filing to be non-est. However, if accompanied with other defects, the Court may form an opinion, based on a cumulative list of such defects, that the filing was non- est;

c) Similarly, non-filing or filing of a defective Vakalatnama; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as non-est. However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, is liable to be declared non-est."

13. The next issue that arises for consideration is as to whether the delay of 690 days in paying deficit Court fee of Rs.1,01,000/- is within the condonable limits of this Court.



WEB COPY

14. The learned counsel for applicants submitted that the limitation prescribed under Section 34(3) of A and C Act is applicable only for initial filing of the application and therefore, where there is a delay in representation at which point of time, deficit Court fee is paid, that will not fall foul of the limitation prescribed under Section 34(3) of A and C Act.

15. To substantiate the above submission, the learned counsel relied upon the judgment of Apex Court in ***Northern Railway Vs. Pioneer Publicity Corporation*** reported in ***(2017) 11 SCC 234*** and the learned counsel placed specific reliance on the following paragraphs in the judgment:

"2. Eventually, the appellant re-filed the matter on 21.03.2013. The explanation given by the appellant is that the amount of Court fees to the extent of Rs.8,94,000 was to be arranged and that took some time. The appellant is the Northern Railway and while it is difficult to condone such inefficiency which seems to be a persistent reality with the organisation, such as the Northern Railway, that took time in arranging even the small things.

3. Mr.Amarjeet Singh Chandiok, learned Senior Counsel appearing for the respondent submitted that Section 34(3) of the Act bars re-filing beyond the period stipulated thereon. The said sub-section reads as follows:

"34(3) An application for setting aside may not be made after three months have elapsed from the date on which the



WEB COPY



party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

4. We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing."

16. The learned counsel also relied upon the order dated 12.01.2023 passed by learned single Judge of this Court in A.No.216 of 2023 in Arb.O.P.(Com.Div.)DR.No.82894 of 2022 and relevant portions are extracted hereunder:

"2. The learned counsel for the applicants submitted that the delay of 96 days in representing the petition Arb.O.P.(Com.Div.) Diary No.82894 of 2022 has occurred only because of the reason that the applicants took some time for arranging the Court fee of Rs.1,00,000/- and getting approval from the departmental authorities. However, the applicants have paid the entire Court fee of Rs.1,00,000/- in the original petition. He further submitted that without



WEB COPY



considering the reasons adduced by the applicants for the delay, the learned Master has dismissed the Application No.5856 of 2022.

3. The case as referred by the learned Master was that is pertaining to the Court fee, where, even at the time of representation, no full Court has been paid. But, in this case, part of the Court fee has been paid by the applicants at the time of representation and thereafter, they have paid the entire Court fee of Rs.1,00,000/-.

4. It is a well settled law that in case where the whole or part of court fees has not been paid, even after filing the suit, the Court may, in its discretion, allow the person to pay the insufficient Court fee at any point of time. Therefore, having been satisfied with the reasons stated by the applicants in the affidavit filed in support of the application, this Arbitration Application is allowed and the order dated 21.12.2022 passed by the learned Master in Application No.5856 of 2022 is set aside, thereby, the delay of 96 days in representing the above Arb.O.P.(Com.Div.) Diary No.82894 of 2022 is condoned."

17. Per contra, the learned counsel for respondents submitted that the judgment that was relied upon by the learned counsel for applicants in the case of **Northern Railway**, was already considered by this Court in **Vikranthi Foundations Vs. Orient Builders** reported in **2023 (4) LW 726** and on considering the same, this Court held as follows:

"13. The learned counsel for the applicant had relied upon two decisions of the Hon'ble Supreme Court in support of his submissions:—

a) One is the decision rendered in **Northern Railway v. Pioneer Publicity Corp. Pvt. Ltd.** In the said decision, the Hon'ble Supreme Court has held that Section 34(3) of the Arbitration and Conciliation Act, 1996, has no application in re-filing the petition



WEB COPY



but only applies to the initial filing of the objections under Section 34 of the Arbitration and Conciliation Act, 1996.

14.

15. As seen from the aforesaid decision, the Hon'ble Supreme Court has categorically held that Section 34(3) of the Arbitration and Conciliation Act, 1996 has no applicability for cases involving delay in re-filing.

16. The other decision relied upon by the learned counsel for the applicant viz., *Ajay Dabra v. Pyare Ram* arising out of SLP (C) No. 15793 of 2019, dated 31.03.2023 while dealing with Section 149 of CPC and Section 4 of the Court Fees Act, the Hon'ble Supreme Court has held that Section 149 of the Civil Procedure Code mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court in its discretion to allow a person, who has filed a memorandum of appeal with deficit Court fee to make good the deficit and the making good of such deficit cures the defects in the memorandum not from the time when it is made but from the time when it was first presented in the Court. The facts of the second decision relied upon by the learned counsel for the applicant which is the *Ajay Dabra's* case, is slightly different from the case on hand. In *Ajay Dabra's* case, the Section 149 of the Code of Civil Procedure application seeking extension of time for the payment of Court fees was filed within the period of limitation for filing the appeal, whereas in the case on hand, the said application has been filed by the applicant beyond the period of limitation prescribed for filing the Section 34 petition under the Arbitration and Conciliation Act, 1996. Therefore, the decision rendered by the Hon'ble Supreme Court in *Ajay Dabra's* case referred to supra has no bearing to the facts of the instant case.

17. Though, as seen from the decision rendered by a learned Single Judge of this Court in the case of *General Manager v. Veeyar Engineers and Contractors*, 2019 SCC OnLine Mad 5586 as well as in the decision rendered by the Division Bench of this Court in the case of *Waaree Energies Limited v. Sahasradhara Energy Pvt. Ltd.*, 2021 SCC OnLine Mad 5086, the decision of the Hon'ble Supreme Court, in the case of *Northern Railway v. Pioneer Publicity Corp. Pvt. Ltd.* in Civil Appeal No. 10340 of 2016 was not considered, the non consideration of the same will not have any impact on this Court's decision with regard to the issues on hand. In the *Northern Railway* judgment of the Hon'ble Supreme Court, referred to supra,



WEB COPY



the issue did not involve non payment of Court fees within the prescribed period of limitation as fixed under Section 34(3) of the Arbitration and Conciliation Act, 1996 but the issue involved in that decision was whether Section 34(3) of the Act is applicable for condoning the delay in re-filing also. The Hon'ble Supreme Court held that Section 34(3) of the Act has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. In the case on hand, the Court fees payable by the applicant was not paid within the prescribed period of limitation as fixed under Section 34(3) of the Act and the petition under 149 CPC seeking extension of time for payment of court fees was also filed beyond the limitation period. Therefore, the decisions relied upon by the learned counsel for the respondent in General Manager v. Veeyar Engineers and Contractors, 2019 SCC OnLine Mad 5586 and Waaree Energies Ltd. v. Sahasradhara Energy Pvt. Ltd., 2021 SCC OnLine Mad 5086 which dealt with identical issues viz., non payment of proper court fees within the limitation period as prescribed under Section 34(3) of the Act are squarely applicable to the facts of the instant case. Having paid the Court fees beyond the limitation period, the petition filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996, is not a proper presentation and therefore, the learned Master has rightly dismissed the applications filed by the applicant a) seeking to condone the delay of 191 days in representation and b) seeking to condone the delay of 211 days in paying the court fees. It is also to be noted that the applicant has once again been indifferent in filing applications aggrieved by the common order of the learned Master as there is a delay in filing these applications as well. The instant applications have been filed to condone the delay of 54 days in filing applications aggrieved by the common order of the learned Master, dated 21.02.2023 passed in A. Nos. 507 and 509 of 2023.

18. Arbitration is an alternate Dispute Resolution Mechanism for expeditious adjudication of disputes. The object of the Arbitration and Conciliation Act, 1996 will be defeated if the applications as the ones which have been rightly dismissed by the learned Master under the common order are entertained. The learned Master has rightly dismissed the applications. Though Section 34(3) of the Arbitration and Conciliation Act, 1996 is not applicable to applications filed seeking to condone the delay in re-filing, the facts of the instant case does not empower this Court to



entertain the applications filed for condonation of delay in re-filing as well as to condone the delay in paying the court fees as admittedly, the Court fees was paid beyond the period of limitation and the petition under Section 149 CPC seeking extension of time for payment of court fees was also filed beyond the limitation period as prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996."

18. The learned counsel submitted that the purport of the judgment of **Northern Railway** case was already considered by this Court and therefore, the applicants cannot rely upon the same judgment and seek for the relief of condonation of delay of 690 days in paying deficit Court fee.

19. The learned counsel for the respondents also placed reliance upon the judgment of learned single Judge of this Court in A.Nos.9610 and 9611 of 2019 dated 11.03.2020 and relevant portions relied upon by the learned counsel for respondents are extracted hereunder:

*"14. In paragraph 15 of **Veeyar Engineers** case, paragraph 21 of **K.Natarajan** case has been extracted and reproduced supra. In other words, **K.Natarajan** case is of relevance. To be noted, in the instant case, it is nobody's case that when OP was presented with huge deficit court fee on 03.06.2019 and affidavit was filed thereafter. Therefore, the presentation made on 03.06.2019 is clearly not proper presentation and does not arrest limitation period prescribed under Sub Section (3) of Section 34 of A and C Act. This means that the re-presentation with proper court fee, if any,*



WEB COPY



ought to have been done within 30 days period, which elapsed on 13.06.2019. Admittedly, re-presentation with deficit court fee of Rs.99,000/- (Rupees Ninety nine Thousand only) was made only on 06.08.2019 with cryptic aforementioned 4 paragraphs affidavit.

15. It is in this context that **Simplex Infrastructure Ltd. Vs. Union of India** reported in 2018 SCC Online SC, 2681 becomes relevant. In **Simplex Infrastructure**, the expression 'but not thereafter', occurring in proviso to sub section (3) of Section 34 of A and C Act came up for consideration and Hon'ble Supreme Court has held that delay of 131 days cannot be condoned and that doing so will be breach of statutory mandate. To be noted, delay in that case was 131 days. The relevant paragraph is paragraph 18 and the same reads as follows:

'18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.'

(Underlining made by this Court to supply emphasis and highlight)

16. To be noted, this Court has followed **Simplex Infrastructure** principle in **Veeyar Engineers**. This is articulated in paragraph 21 of **Veeyar Engineers**, which reads as follows:

'21. In this regard, it is necessary to refer to a recent judgment of Hon'ble Supreme Court in **Simplex Infrastructure** being [Simplex Infrastructure Ltd. vs. Union of India](#) reported in 2018 SCC Online SC, 2681. The relevant paragraph is



paragraph 18 and the same reads as follows:

18. 'A plain reading of sub-section (3) along with the proviso to [Section 34](#) of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of [Section 34](#) could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of [Section 14](#) of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read <http://www.judis.nic.in> along with the proviso to [Section 34](#) of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.'

(Underlining made by this Court to supply emphasis and highlight)

17. Thereafter, what is of utmost relevance is paragraphs 31 and 32 of **Veeyar Engineers**, which read as follows:

'31. Though law is well settled that when a special statute prescribes a special time frame, [Section 5](#) of the Limitation act, 1963 does not apply, this Court has reminded itself that sub-section (3) and proviso thereto to section 34 of A & C Act which fall in this category should also be seen in the perspective of aforesaid pillars of ADR Mechanism. If parties who have opted for ADR Mechanism are allowed to leisurely come before this Court under [section 34](#), it will lead to a situation where salutary principles and sublime philosophies underlying the ADR Mechanism (which have been described as pillars on which edifice of law governing ADR Mechanism is built) can be easily neutralised, nullified and defeated by resorting to procrastination. This Court deems it appropriate to set out that this court has reminded itself about this aspect of the matter also.

32. If the instant petition is held to be maintainable, besides being impermissible owing to [section 34\(3\)](#) and



WEB COPY



proviso thereto and the overriding section 149 of CPC (though not invoked), it will also create an avenue and may open the floodgates for litigants to approach this court leisurely and defeat the objectives of ADR Mechanism. Therefore, this court is convinced that the instant OP is clearly not maintainable. In other words, entertaining instant OP will pave the way for litigants, who intend to procrastinate, to merely file some sheets of paper without proper presentation, i.e., without proper court fee or impugned order and thereafter, endlessly extend the limitation prescribed. This will open floodgates which will dilute and wash away the principle underlying ADR Mechanism. Though this Court has no hesitation in holding that O.P.Diary No.18375 of 2018 is not maintainable owing to plain operation of provisions of law itself, these aspects/principles touching upon 'ADR Mechanism' have been alluded to only as additional phenomena.' "

20. The learned counsel also placed reliance upon the judgment of Hon'ble Division Bench of this Court in ***Warree Energies Limited, Rep. by its Authorised Signatory Vs. Sahasradhara Energy P. Ltd.***, reported in ***2021 0 Supreme (Mad) 1862*** wherein, specific reliance was placed upon by the above order passed by learned single Judge and Hon'ble Division Bench held as follows:

"4. After referring to the submission of the appellant herein and how a similar matter had been dealt with by the single Bench in the judgment reported at 2020 (1) TLNJ 526 (Civil) (General Manager Vs. Veeyar Engineers and Contractors), the Court posed a question whether the presentation of the petition with the nominal Court-fees of Rs.1,000/- instead of the payable quantum of Rs.1 Lakh amounted to proper presentation. On the basis of the previous judgments referred to hereinabove, the Court concluded at



WEB COPY



paragraph 14 of the impugned judgment that the presentation of the petition on June 3, 2019, "is clearly not proper presentation and does not arrest limitation period prescribed under Sub Section (3) of Section 34" of the Act of 1996. The Court reasoned that the entire exercise had to be properly completed by June 13, 2019 for the appellant herein to seek condonation within the additional 30 days after the expiry of three months from the date of receipt of the award. The representation with appropriate court-fees in this case was only on August 6, 2019."

21. The learned counsel for the respondents submitted that if there is any deficit in payment of Court fee, the presentation of the petition will become proper only when the entire Court fee is paid and such Court fee has to be paid within the condonable period of 90 + 30 days. If that is not done, the original presentation itself must be construed as not proper and on the expiry of 120 days, this Court does not have power to condone the delay in the light of Section 34(3) of A and C Act. Accordingly, the learned counsel for the respondents sought for dismissal of both the applications.

22. Insofar as the first issue is concerned, this Court will go into that issue with the presumption that copy of the award was available and it was filed along with original petition. In this view of the matter, in the grounds that were raised in the petition, specific reliance has been placed on certain



paragraphs in the award. This would only mean that the copy of the award was available at the time of drafting the petition and filing the same on 24.07.2023.

23. The next issue is as to whether the original award ought to be filed along with the petition in order to construe it as a proper presentation. The Full Bench judgment of Delhi High Court that was relied upon by the learned counsel for the respondents was dealing with the case where the arbitral award itself was not filed along with the petition. Under such circumstances, it was held that the very petition must be treated to be non-est in the eye of law. Hon'ble Full Bench of Delhi High Court did not deal with the scenario where copy of the award was filed along with the petition.

24. At this juncture, it will be relevant to take note of the judgment of Hon'ble Division Bench of Delhi High Court in ***Delhi Urban Shelter Improvement Board*** case referred supra. The Delhi High Court was dealing with the scope of Section 31(5) of A and C Act in that case. An unsigned copy was originally filed along with the petition and later, the original



containing the signature of the Arbitrator was brought in. While dealing with the same, Hon'ble Division Bench of Delhi High Court held that once when an authentic copy of an award is available, the original presentation cannot be held to be improper just because it did not contain the signature in the handwriting of the Arbitrator.

25. In the case on hand, the photocopy of the award seems to have been filed along with the petition and at the time of representation, the original award was filed. It is nobody's case that the copy of the award that was originally filed is not in line with the original award which was later filed at the time of representation. Hence, it cannot be held that the original filing of the petition along with the copy of the award on 24.07.2023 is improper filing.

26. The next issue pertains to deficit Court fee. The learned counsel for the applicants placed heavy reliance upon the judgment of ***Northern Railway*** case referred supra. This Court had an opportunity to consider the judgment of Apex Court in ***Northern Railway*** case in ***Vikranthi Foundations*** case referred supra. This Court held that the judgment of



Apex Court in *Northern Railway* case did not involve non-payment of Court fee within the prescribed period of limitation as fixed under Section 34(3) of A and C Act and that the issue involved in that decision was whether Section 34(3) of A and C Act is applicable for condoning the delay in re-filing also. The Hon'ble Apex Court held that Section 34(3) of A and C Act has no application in re-filing the petition but it only applies to initial filing of the petition under Section 34(3) of A and C Act.

27. After having rendered the above finding, learned single Judge went into the issue of delay in payment of deficit Court fee. Learned single Judge held that the applicants in that case did not pay the deficit Court fee within the period of limitation as fixed under Section 34(3) of A and C Act. It was therefore, held that any deficit Court fee that was paid beyond the time frame fixed under Section 34(3) of A and C Act, does not come within the condonable limits of this Court. Accordingly, learned single Judge upheld the order passed by the learned Master.

28. It is also relevant to take note of yet another order that was relied upon by the learned counsel for the respondents in A.Nos.9610 & 9611 of



2018. That was a case where there was delay in paying deficit Court fee beyond the period prescribed under Section 34(3) of A and C Act. The learned single Judge of this Court, by relying upon the judgment in **General Manager vs. Veeyar Engineers and Contractors** reported in **2019 SCC OnLine Mad 5586** held that if the papers are represented with proper Court fee, such delay in payment of deficit Court fee can be condoned only if it comes within the condonable period prescribed under Section 34(3) of A and C Act. This is in view of the fact that the original presentation with deficit Court fee is not a proper presentation and it becomes a proper presentation only if the entire Court fee is paid. Such proper presentation must take place within the condonable period under Section 34(3) of A and C Act and in the absence of the same, the Court cannot condone the delay. The above order passed by learned single Judge was taken note by the Hon'ble Division Bench of this Court in the case of **Waaree Energies** referred supra. Hon'ble Division Bench once again reiterated the law that if the deficit Court fee is paid beyond the limitation period prescribed under Section 34(3) of A and C Act, it cannot be condoned by this Court.



29. All the above judgments make it clear that filing of a petition with deficit Court fee cannot be construed as proper presentation of the petition.

If such presentation of the petition has to be regularized, the deficit Court fee must be paid within the limitation period prescribed under Section 34(3) of A and C Act. If the same is not done, the Court is divested of its power to condone the delay in the light of mandate prescribed under Section 34(3) of A and C Act. In other words, improper presentation of the petition by paying deficit Court fee, does not arrest the limitation period prescribed under sub-section (3) of Section 3 of A and C Act, unless the deficit Court fee is paid within the limitation period prescribed in that provision. If the limitation period is crossed, an application filed thereafter to condone the delay in paying the deficit Court fee cannot even be entertained, since it goes beyond the power of the Court which is circumscribed under Section 34(3) of A and C Act.

30. The order passed by learned single Judge in A.No.216 of 2023 dated 12.01.2023 which was relied upon by the learned counsel for applicants, does not lay down the correct law. Learned single Judge has not taken into consideration earlier judgment of Hon'ble Division Bench in this



regard. In the light of the above discussion, with respect to the second issue pertaining to the delay of 690 days in paying deficit Court fee, the Court is not vested with any power to condone this delay. Hence, the second issue is decided against the applicants.

31. It is an unfortunate case where the applicants' erstwhile counsel had been paid with sufficient amount both towards Court fee as well as professional fee. However, learned counsel seems to have presented the petition by merely affixing the Court fee of Rs.10/-. All these facts came to light in the year 2025 when the representation took place and thereafter, the present learned counsel had taken steps to represent the papers properly and complied the defects pointed out by the Registry. If the facts stated by the applicants are true, obviously, the applicants have been cheated by the Advocate and it has to be necessarily followed up and professional misconduct proceedings has to be initiated against the concerned Advocate before the bar council. However, this issue cannot come to the aid of the Court, while dealing with these applications since the power of the Court is circumscribed under Section 34(3) of A and C Act. This Court cannot act beyond the scope of Section 34 of A and C Act. Hence, this Court can only



express its anguish disappointment for the conduct of learned counsel, who had virtually betrayed the applicants and it has resulted in applicants losing their valuable right to challenge the award under Section 34 of A and C Act. Hence, it is left open to the applicants to independently proceed against the concerned learned counsel, if so advised.

32. In the result, both the applications namely, A.Nos.4872 and 4874 of 2025 stand dismissed in the above terms. Consequently, Arbitration Original Petition i.e., Arb.OP(Com.Div.)SR.No.95844 of 2023 stands rejected at the SR stage itself.

23.10.2025

mk

Index: Yes
Speaking Order
Neutral Citation Case : Yes



WEB COPY



Appln.Nos.4872 and 4874 of 2025

N.ANAND VENKATESH, J.

mk

**Appln.Nos.4872 and 4874 of 2025
in
Arb.O.P.(Com.Div.)SR.No.95844 of 2023
and
Arb.O.P.(Com.Div.)SR.No.95844 of 2023**

23.10.2025