IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17-10-2025

DATE OF DECISION : 23-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Application No.2538 of 2025

California Institute of Computer Assisted Surgery,
Inc. rep.by its Managing Director Dr.Ramin Shahidi
502, Palam Avenue, Suite 1, Los Altos
California 94022 (U.S.A.) ... Applicant

Vs

M/s Perfint Healthcare Pvt.Ltd.,
No.16, III Floor, South West Boag Road
T.Nagar, Chennai 600 017
Tamil Nadu, India represented by its
Board of Directors
(i) Mr.Nandakumar Subburaman
(ii) Mr.Gopalakrishna Kulkarni
(iii) Mr.Veeraraghavan Mohan Kumar

Registered office at
11/7, 10th Street, Dr.VSI Estate
Thiruvanmiyur, Chennai 600 041 ... Respondent

PRAYER

To condone the delay of period spent between 24.01.2017 and 22.03.2022 as the same was spent in E.P.No.17/2017 proceedings before this Hon'ble Court.

For Applicant : Mr.S.R.Sundar for
Mr.R.Anish Kumar

For Respondent : Mr.Vinod Kumar for
M/s J.Sagar Associates

ORDER

This application has been filed to condone the period of delay that was spent between 24.01.2017 and 22.03.2022 during the proceedings in E.P.No.17 of 2017.

2. The case of the applicant is that the applicant originally filed E.P.No.17 of 2017 for enforcement of the foreign award and the petition was listed before the learned Master. Since the same was entertained, A.Nos.1633 & 1634 of 2018 came to be filed by the respondent challenging the order passed by the learned Master and also for staying the execution proceedings. These applications were dismissed by the learned single Judge by an order dated 10.07.2018. Aggrieved by the same, the respondent filed O.S.A.Nos.288 and 289 of 2018 before the Division Bench. The Division Bench of this Court, by an order dated 02.01.2019, allowed the appeals in the following terms:-

> "56. We therefore, allow both the appeals and hold that the order dated 10.07.2018 of the learned Single Judge made in Application Nos.1633 & 1634 of 2018, confirming the order dated 14.12.2017 of the learned Master in E.P.No.17 of 2017 is erroneous. In the result, the order dated 10.07.2018 of the learned single Judge

> confirming the order of the learned Master is hereby set aside and E.P.No.17 of 2017 filed by the respondent is dismissed. Consequently, connected miscellaneous petitions are closed. However, we grant liberty to the respondent if so advised to file an application under Section 47 of the Arbitration and Conciliation Act, 1996 to enforce and execute the foreign arbitral award dated 23.07.2015 before the learned Single Judge of this Court in the Original Side. No costs."

3. Pursuant to the above order, the applicant filed Arb O.P.(Com.Div.)No.571 of 2023 for enforcement of the foreign award dated 23.07.2015 passed by the sole Arbitrator at California, USA and to execute the same as a decree. The respondent raised a preliminary objection stating that the original petition is barred by limitation, since the same has been filed beyond three years from the date of the award, as provided under Article 137 of the Limitation Act. On such objection being raised, the present application was filed, after the original petition was numbered, to condone the delay.

4. Yet another application was filed by the applicant in A.No.2796 of 2025 to amend Para-15 of the original petition and to make necessary amendments and this application came to be allowed by an order dated 02.07.2025. Upon allowing the said application, the applicant also filed the

amended pleadings.

5. The learned counsel for respondent submitted that the original petition itself ought not to have been numbered without the application to condone the delay in filing the petition being considered and allowed. Therefore, the learned counsel for respondent sought for the dismissal of the original petition. The learned counsel further submitted that even if the ground taken by the applicant to exempt the time taken in prosecuting the earlier petition is accounted, there will be a delay of 287 days, which remains unexplained. To substantiate the same, the learned counsel for respondent filed a tabulation on computation of limitation to the following effect:-

S. No.	Event	Dates	Number of days
1.	Foreign Award	23.07.2015	
2.	Limitation period of 3 years	24.07.2015 to 23.07.2018	1096 days
3.	E.P.No.17 of 2017 till order in O.S.A.Nos.288 & 289 of 2018	24.01.2017 to 02.01.2019	
4.	Foreign award till date of filing E.P.17 of 2017	23.07.2015 to 24.01.2017	551 days
5.	Balance period of limitation from order in O.S.A.Nos.288 & 289 of 2018	03.01.2019 to 01.07.2020	545 days
6.	Covid-19 period exemption	15.03.2020 to 28.02.2022	
7.	Order in O.S.A.Nos.288 & 289 of 2018 till the day before Covid-19 exemption	03.01.2019 to 14.03.2020	437 days
8.	Balance period of limitation on conclusion of Covid-19 exemption period	01.03.2022 to 17.06.2022	108 days
9.	Arb.O.P.571 of 2023 filed	31.03.2023	

S. No.	Event	Dates	Number of days
10.	Delay in filing Arb.O.P.571 of 2023	18.06.2022 to 31.03.2023	287 days

6. The learned counsel for respondent also relied upon the judgment of the Apex Court in the case of *Shivamma (Dead) by LRs v. Karnataka Housing Board and others, 2025 SCC OnLine SC 1969* and submitted that without explaining the reasons for the delay, the relief sought for by the applicant to condone the delay cannot be granted by this Court.

7. The learned counsel for applicant submitted that the Division Bench passed an order in the original side appeals on 02.01.2019 and the certified copy of the order was received by the applicant on 31.01.2019. Thereafter, the Covid-19 pandemic started and there was a complete lock down. Ultimately, the applicant filed an application before the learned Master on 06.07.2021 seeking for the return of the original arbitration award and agreement in order to enable the applicant to file the fresh petition. The order was passed by the learned Master only on 18.02.2022. The original award was returned on 22.03.2022. The applicant thereafter got the signed petition and filed the same on 31.03.2023. By virtue of the order passed by the Apex Court in the suo motu writ petition, the time period from 15.03.2020 to 28.02.2022 must be excluded

on account of the Covid-19 pandemic. If the same is done, the interregnum period that was spent by the applicant to prosecute the earlier petition must be excluded and in which event, there is no exorbitant delay on the part of the applicant.

8. The learned counsel for applicant, by relying upon the judgment of the Apex Court in the case of *Government of India v. Vedanta Limited and others (2020) 10 SCC 1,* submitted that the petition filed under Section 47 of the Act cannot be construed as an execution petition under Order XXI CPC and therefore, only Article 137 of the Limitation Act will apply and if there is a delay, Section 5 of the Limitation Act will also apply to condone the delay in filing the petition. The relevant paragraphs relied upon by the learned counsel for applicant are extracted hereunder:-

> "72. Foreign awards are not decrees of an Indian civil court. By a legal fiction, Section 49 provides that a foreign award, after it is granted recognition and enforcement under Section 48, would be deemed to be a decree of "that Court" for the limited purpose of enforcement. The phrase "that Court" refers to the Court which has adjudicated upon the petition filed under Sections 47 and 49 for enforcement of the foreign award. In our view, Article 136 of the Limitation Act would not be applicable for the enforcement/execution of a foreign award, since it is not a decree of a civil court in India.
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> 73. The enforcement of a foreign award as a deemed decree of the High Court concerned [as per the amended Explanation to Section 47 by Act 3 of 2016 confers exclusive

jurisdiction on the High Court for execution of foreign awards] would be covered by the residuary provision i.e. Article 137 of the Limitation Act. A three-Judge Bench of this Court in *Kerala SEB v. T.P.Kunhaliumma*[26] held that the phrase "any other application" in Article 137 cannot be interpreted on the principle of *ejusedem generis* to be applications under the Civil Procedure Code. The phrase "any other application" used in Article 137 would include petitions within the word "applications," filed under any special enactment. This would be evident from the definition of "application" under Section 2(b) of the Limitation Act, which includes a petition. Article 137 stands in isolation from all other Articles in Part I of the Third Division of the Limitation Act, 1963.

74. The exclusion of an application filed under any of the provisions of Order 21 CPC from the purview of Section 5 of the Limitation Act, was brought in by the present Limitation Act, 1963. Under the previous Limitation Act, 1908 there were varying periods of limitation prescribed by Articles 182 and 183 of the said Act, as well as Section 48 of the CPC, 1908. Article 182 provided that the period of limitation for execution of a decree or order of any civil court was 3 years, and in case where a certified copy of the decree or order was registered, the period of limitation was 6 years. Article 183 provided that the period of limitation to enforce a decree or order of a High Court was 6 years. Section 48 CPC (which has since been repealed by Section 28 of the Limitation Act of 1963) provided that the period of limitation for execution of a decree was 12 years.

75. The Law Commission in its 3rd Report dated 21-7-1956 noted that different time-limits were prescribed for filing an application for execution of decrees or orders of civil courts. It was recommended that the time-limit should be absolute, and there should be no scope for any further extension of time by acknowledgments. There was no justification for making a distinction between decrees or orders passed by the High Court in exercise of original civil jurisdiction, and other

26 *(1976) 4 SCC 634*

decrees. The maximum period of limitation for the execution of a decree or order of any civil court was fixed at twelve years in the new Limitation Act, 1963 from the date when the decree or order became enforceable. In this background, the present Limitation Act, 1963 excludes any application filed under Order 21 from the purview of Section 5 of the Act, with the object that execution of decrees should be proceeded with as expeditiously as possible. The period of limitation for execution of the decree of a civil court is now uniformly fixed at the maximum period of 12 years for decrees of civil courts.

76. In view of the aforesaid discussion, we hold that the period of limitation for filing a petition for enforcement of a foreign award under Sections 47 and 49, would be governed by Article 137 of the Limitation Act, 1963 which prescribes a period of three years from when the right to apply accrues.

77. The application under Sections 47 and 49 for enforcement of the foreign award, is a substantive petition filed under the Arbitration Act, 1996. It is a well-settled position that the Arbitration Act is a self-contained code.[27] The application under Section 47 is not an application filed under any of the provisions of Order 21 CPC, 1908. The application is filed before the appropriate High Court for enforcement, which would take recourse to the provisions of Order 21 CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5, which excludes an application filed under any of the provisions of Order 21 CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996. Consequently, a party may file an application under Section 5 for condonation of delay, if required in the facts and circumstances of the case."

9. This Court has carefully considered the submissions made on either side and the materials available on record.

27 *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178;*

10. The Apex Court in the case of *Shivamma (Dead)* referred supra, dealt with the entire gamut of case laws dealing with the jurisdiction exercised to condone the delay in filing any appeal. The Apex Court held that while exercising the discretion under Section 5 of the Limitation Act, Courts should adopt a pragmatic approach. The discretion must be made between a case where the delay is inordinate and a case where the delay is of few days. No hard and fast rule can be laid down in this regard and it will depend upon the facts of each case. When the Court deals with the expression "sufficient cause", it was made clear that the principle of advancing substantial justice is of prime importance. *(emphasis supplied)*

11. In the case on hand, this Court is dealing with a petition that has been filed for enforcement of a foreign award passed in the year 2015 and which has already reached finality. Therefore, this Court should not deal with the delay petition as it is normally dealt with in a condone delay petition filed in an appeal or a revision. This Court has to necessarily take into consideration the fact that the main dispute is over and what is left is the execution of the foreign award. Therefore, while dealing with the condone delay petition at the execution stage, the Court has to necessarily adopt a pragmatic approach keeping in mind the principle of advancing substantial justice.

12. In the case on hand, the award was passed on 23.07.2015. The earlier execution petition was filed on 24.01.2017. The matter went upto the Division Bench and the final orders were passed in the O.S.A.Nos.288 & 289 of 2018 on 02.01.2019. The Division Bench gave liberty to the applicant to file a fresh petition under Section 47 of the Arbitration and Conciliation Act to enforce the foreign award.

13. The applicant had already filed the foreign award in the earlier proceedings and therefore they had to necessarily get back the original award copy and the agreement. For that purpose, application was filed before the learned Master and the order was passed by the learned Master to return the original award only on 18.02.2022 and the Registry returned the original award on 22.03.2022. In the meantime, the Covid-19 pandemic brought the entire world to a standstill.

14. The applicant ultimately filed the present petition for enforcement on 31.03.2023.

15. The computation of limitation, which was tabulated and presented by the respondent, clearly brings out the exact delay in filing the petition.

Ultimately, there is a delay of 287 days and according to the respondent, no sufficient cause has been shown by the applicant to condone the delay and therefore the application must be dismissed.

16. While dealing with an application to condone the delay in filing the execution petition, the Court must keep in mind that the party has approached the Court to enforce a foreign award. In the light of the judgment of the Apex Court in *Government of India v. Vedanta Ltd* referred supra, Article 137 of the Limitation Act will apply and if there is a delay, Section 5 of the Limitation Act will also be applicable. Therefore, the Court should avoid adopting a pedantic approach in dealing with the application to condone the delay at the execution stage. It is true that the applicant has not properly explained the delay during the period 2019 and also between March, 2022 and March, 2023. That by itself should not be a reason for dismissing the application to condone the delay in filing the petition to enforce the foreign award. On the plea of limitation, if the application is dismissed, the applicant will be put to serious prejudice, since they already have an award passed in their favour. The respondent will go scot-free in spite of suffering an award passed against them. That will not in any way result in rendering substantial justice. Therefore, this Court is inclined to condone the delay on terms.

17. The original petition ought not to have been numbered in this case before the delay was condoned. Useful reference can be made to the judgment of the Division Bench of this Court in the case of *Shoba Viswanathan v. D.P.Kingsley, 1996-1-L.W.88*. That was a case where the the original side appeal was numbered, but, however, there was a delay in filing the appeal. In view of the same, the Division Bench set aside the earlier order passed for listing the petition along with the main appeal for hearing. The Division Bench condoned the delay on payment of costs and thereafter directed the Registry to number the main appeal.

18. The above approach made by the Division Bench can be followed in the facts of the present case also. As already stated, the main petition ought not to have been numbered before the delay was condoned. Therefore, the order passed by this Court on 02.01.2024 ordering notice to the respondent in the main original petition is rescinded and the registration of Arb O.P.(Com.Div.)No.571 of 2023 will stand deleted.

19. In view of the above, A.No.2538 of 2025 stands allowed and the delay in filing the original petition will be condoned on condition that the applicant pays costs of Rs.50,000/- (Rupees fifty thousand only) to the Madras

High Court Advocates Clerks Welfare Association, on or before 07.11.2025. On satisfying this condition, Registry is directed to number the main original petition afresh and list it for hearing.

23-10-2025

Index:Yes
Speaking order/Non speaking order
Internet:Yes
Neutral Citation:Yes

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To

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No.16, III Floor, South West Boag Road
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Tamil Nadu, India represented by its
Board of Directors

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N.ANAND VENKATESH J.

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Order in A.No. 2538 of 2025

23-10-2025