



O.S.A (CAD) No.91 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.09.2025**

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **MUMMINENI SUDHEER KUMAR**

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1. S.Raghavan
S/o.Sugavanan

2. Jaisri Raghavan
W/o.S.Raghavan

... Appellants

Vs.

A.Rathinavel
Proprietor
S.R.Constructions
No.18, Ramakrishnapuram, 5th Street
Mylapore, Chennai-600 004.

1. R.Sumathi
W/o.Late A.Rathinavel

2. R.Durga
D/o.Late Rathinavel

3. R.Nithya
D/o.Late Rathinavel

.. Respondents

Original Side Appeal filed under Section 37 of the Arbitration
and Conciliation Act, 1996 read with Section 13 of the Commercial



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Courts Act, 2015 to set aside the order dated 21.04.2025 in A.No.2001 of 2025 in Arb.O.P.(Com.Div.)D.R.No.55253 of 2025; hold that the delay stands justified and condoned in light of the judicial permission, medical and financial hardship and *bona fide* conduct; direct that the Section 34 petition be numbered and restored for hearing on merits.

For Appellants : Mr.B.Balaji
For Respondents : Mr.S.Sathia Chandran
For caveators

J U D G M E N T

(Judgement of the Court was made by **M.SUNDAR, J.**)

An order dated 21.04.2025 made in A.No.2001 of 2025 in Arb.O.P.(Com.Div.)DR.No.55253 of 2025 dismissing a 'condonation of delay' {'CoD' for the sake of brevity} application qua 181 days delay in filing a petition under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] has been assailed in the captioned intra-Court appeal i.e., 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity, convenience and clarity}. This 21.04.2025 order dismissing a CoD application, made by a Hon'ble single Judge of this Court (Commercial Division) shall be referred to as 'impugned order' for the sake of convenience and clarity.



2. Interestingly and intriguingly, we find that the caption to the

memorandum of grounds of appeal says that it is an appeal under Section 37 of A and C Act read with Section 13 of 'The Commercial Courts Act, 2015 (Act 4 of 2016)', {hereinafter 'CCA' for the sake of convenience and clarity} but in the narrative it has been mentioned that it is a Original Side Appeal under Clause 15 of Letters Patent. To be noted,

The caption reads as follows:

'MEMORANDUM OF APPEAL UNDER SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 R/W UNDER SECTION 13 OF COMMERCIAL COURTS ACT, 2015'

The relevant portion of narrative reads as follows:

'The Appellants above named respectfully submit this Original Side Appeal under Clause 15 of the Letters Patent against the order dated 21.04.2025.....'

3. Mr.B.Balaji, learned counsel for appellants and Mr.S.Sathia Chandran, learned counsel, who has lodged caveat on behalf of respondents are before us.



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4. Mr.B.Balaji, learned counsel for appellants submitted that the reasons being medical issues and financial hardship are tenable and the same ought to have been accepted by the Commercial Division.

5. At the outset, we find that maintainability of captioned appeal under Section 37 of A and C Act falls for consideration. Section 37 of A and C Act reads as follows:

'37. Appealable orders

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely :-

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) Setting aside or refusing to set aside an arbitral award under Section 34.

(2) An appeal shall also lie to a Court from order of the arbitral tribunal -

(a) accepting the plea referred to in sub-section (2) or sub-section(3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.



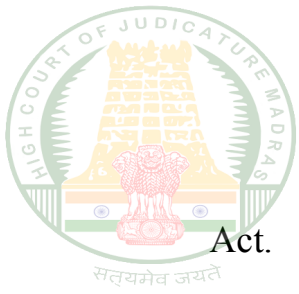
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(3) *No second appeal shall lie from an order passed in appeal under this Section, but nothing in this Section shall affect or take away any right to appeal to the Supreme Court.'*

6. Hon'ble Supreme Court in ***Simplex*** case [***Union of India Vs. Simplex Infrastructures Limited*** reported in (2017) 14 SCC 225] (for the sake of clarity and specificity, we shall be referring to this Simplex case as ***Simplex-I***) made it clear that an appeal under Section 37 assailing an order in a CoD application under Section 34(3) is not maintainable. To be noted, ***Simplex-I*** was rendered by a two member Bench on 13.04.2017 but later in ***Chintels case*** {***Chintels India Ltd v Bhayana Builders Pvt Ltd.***, reported in (2021) 4 SCC 602} being order dated 11.02.2021 in Civil Appeal No.4028 of 2020 rendered by a three member Bench, Hon'ble Supreme Court considered ***Simplex-I*** and after holding that dismissal of CoD application results in refusal to set aside the arbitral award under Section 34 [though not on merits but as being time barred] and therefore, it would tantamount to 'refusal to set aside an arbitral award' within the meaning of Section 37(1)(c), on this logic, law was unambiguously laid down i.e., law that an appeal under Section 37(1)(c) of A and C Act would be maintainable against an order refusing to condone delay in filing an application under Section 34 of A and C



Act. Therefore, we respectfully apply *Chintels case* and hold that captioned appeal is maintainable under Section 37(1)(c) of A and C Act.

7. Owing to the above, this Court is constrained to examine the question as to whether captioned appeal would be maintainable as the intra-court appeal under clause 15 of letter patent. In *Furest Day Lawson Ltd., Vs. Jindal Exports Ltd.*, reported in (2011) 8 SCC 333, law was settled that an intra-Court appeal under Clause 15 is not maintainable on the teeth of Section 37 and the negative expression 'and from no others' occurring in parenthesis in Section 37 was explained. Therefore, in the light of *Furest Day Lawson*, we have no difficulty in holding that the captioned appeal invoking clause 15 of Letters Patent in the narrative part of memorandum of grounds of appeal is plainly incorrect.

8. This Court deems it appropriate to write that even one day delay beyond 30 days (condonable period) post three months (prescribed period) vide Section 34(3) and proviso thereat is not condonable. This principle was laid down by Hon'ble Supreme Court in *Simplex* case [*Simplex Infrastructure Limited Vs. Union of India* reported in (2019) 2 SCC 455] (for the sake of clarity and specificity, we shall be referring



to this Simplex case as **Simplex-II**). Relevant paragraph in **Simplex-II** is

paragraph No.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.'

The expression 'but not thereafter' occurring in proviso to Section 34(3) was explained to say that the condonation of delay beyond 30 days cap post the prescribed period of three months cannot be condoned.

9. The impugned order makes it clear that 181 days delay in filing Section 34 petition cannot be condoned as it is beyond 30 days [condonable period] post 3 months [prescribed period]. In other words, it is well and truly beyond 3 months and 30 days. This Court, while



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referring to 3 months prescribed period and 30 days condonable period

thereafter is consciously not using the expression '120 days' or '4 months'

as a careful perusal of the language in which sub-section (3) of Section

34 and proviso thereat makes it clear that the prescribed period and

condonable period are set out in different units while prescribed period is

'3 months', the condonable period is '30 days'. ***Dodds Vs. Walker***

reported in ***(1981) 2 All ER 609 (HL)*** is the lead case with regard to the

manner for computing one month. ***Dodds Vs. Walker*** principle is, one

month should be computed by taking the same date in next English

calendar month which may or may not be 30 days.

Axiomatically/conversely, 30 days may or may not be one month. A

single judge of this Court in O.P.No.443 of 2020, dated 10.12.2020

[Bharat Sanchar Nigam Limited Vs. Micro and Small Enterprises

Facilitation Council, Jaipur reported in ***2021-2-LW 42***] explained this

computation and the relevant paragraph is as follows:

'10. This Court now proceeds to set out how the three months under Section 34(2) and 30 days condonable period were computed. Following Himachal Techno Engineers case [Himachal Pradesh and Another Vs. Himachal Techno Engineers and another reported in (2010) 12 SCC 210], the date of receipt of award i.e., 04.11.2019 was excluded and 3



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months was computed from 05.11.2019. With regard to three months, as unit of time has been given in terms of months, corresponding date in the third month was taken based on the principle laid down in Dodds Vs. Walker reported in (1981) 2 All ER 609 (HL), an English case law, which was followed by Hon'ble Supreme Court in Bibi Salma Khatoon v.State of Bihar reported in (2001) 7 SCC 197. Therefore, three months elapsed on 05.12.2020 as set out supra. Thereafter, 30 days condonable period was calculated and to be noted 30 days is in terms of the unit days. It has become necessary to set out the mode of computation as the prescribed period of limitation and the condonable period vide Section 34(3) and proviso thereto, have been given in two different measures i.e., two different units. While prescribed period is given in terms of months, the condonable period is given in terms of days .'

Therefore, we repeatedly (throughout this order) used the expression '3 months and 30 days' for describing the 'prescribed period' and 'condonable period' together and we have not described the same either as '120 days' or as '4 months'.

10. In the impugned order, Commercial Division has not referred to *Simplex-II* but relied on *Simplex-II* principle by stating that 121 days delay in filing Section 34 petition cannot be condoned. This being the correct position of law in the light of *Simplex-II*, we find no



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reason to interfere with the impugned order. This also means that there is

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no need or necessity to dilate on the reasons for delay as delay beyond 30

days is not condonable at all in the light of ***Simplex-II*** principle.

11. Ergo, the sequitur is, captioned intra-Court appeal i.e., OSA is dismissed. We refrain from imposing costs.

(M.S.,J.) (M.S.K.,J.)
04.09.2025

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Index : Yes

Neutral Citation : Yes



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and

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