

Appln.Nos.6400 & 6395 of 2024

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K.KUMARESH BABU,J.

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These Applications had been filed to recall the orders passed by this Court condoning the delay of 14 and 17 days in filing the two Arbitration O.Ps.

2. The case of the applicant is that the Award was originally passed in this case on 01.11.2022. The petition under Section 34 of the Arbitration and Conciliation Act was originally filed by the respondent before the Rohini District Court, Delhi on 13.02.2023, in which an order of pre-deposit was made. The same came to be challenged by the respondent before the Delhi High Court in the month of October 2023. The respondent thereafter made an application under Order VII, Rule 10 of CPC seeking to return the petition to represent it before the jurisdictional Court and on 15.02.2024, the District Court, Delhi permitted the respondent to withdraw the petition with liberty to file the same before the appropriate Court having jurisdiction. A fresh application was made under Section 34 of the Act before this Court by contending that there has been only a delay of 17 days in filing the O.P beyond the 90 days period and this Court also taking into account that it was only a period of 14 and 17 days, dispensed with the notice to the respondent namely the applicant herein and allowed the applications. He would submit that the petitioner therein had not prayed for excluding the period of

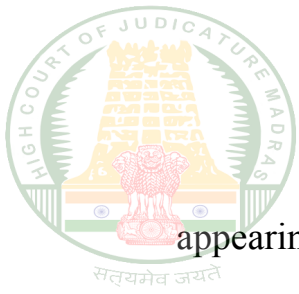


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pendency of the O.P. in a wrong forum and without such application, exemption could not have been claimed and therefore, there has been a delay of nearly 380 days which is beyond the time prescribed under the Arbitration and Conciliation Act. Hence, he would seeks this Court to recall the order.

3. On the contrary, Ms.Krithika Jaganathan, learned counsel appearing on behalf of the respondent would contend that the application had been filed to condone the delay wherein a specific pleadings have been made that the period of pendency of the O.P., before a wrong jurisdictional Court would have to be exempted in view of Section 14 of the Limitation Act. She would further submit that only after obtaining necessary permission from the District Court, Delhi to represent the petition before the jurisdictional Court namely this Court withdrawn the petition and represented the same before this Court. She would further submit that the benefit of Section 14 of the Limitation Act is a statutory benefit and therefore, a separate application need not be made seeking for exclusion of the time. Hence, he would submit that there is no error in the order passed by this Court which would warrant recalling of the same.

4.I have considered the submissions made by the learned counsels



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appearing on either side and had perused the materials available on record.

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5. Admittedly, the respondent had filed O.P. before the Delhi District Court as the venue of arbitration was at Delhi. Thereafter, when the objections were raised with regard to the jurisdiction, the respondent had made an application under Order VII, Rule 10 of CPC seeking to withdraw the petition for representing the same before the jurisdictional Court. It had also sought the benefit of Section 14 of the Limitation Act. Section 14 of the Limitation Act envisages exclusion of the time of a proceeding which had been made bonafidely in a Court without jurisdiction. It is not the case of the applicant that there was no bonafides in the respondent presenting the O.P. before the District Court, Delhi. The Provision envisages that while computing the period of limitation for any application, the time that had been spent by the applicant before a Court which had no jurisdiction, can be excluded, if the same was made in good faith. In the present case, it is the case of the respondent that since the venue of arbitration was Delhi, the respondent had filed the O.P. before the Delhi High Court. Only after objections were raised and on legal advice, he had sought withdrawal of the same from the District Court to present the papers before this Court. Hence, in my view that the respondent seems to have bonafidely prosecuted his O.P. before the District Court



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at Delhi, which had no jurisdiction and he would be entitled to the benefit of

Section 14 of Limitation Act.

6.It is also to be noted that such benefit granted under Section 14 is a statutory benefit and that no separate application need to be taken out by the respondent for exclusion of the period spent before the wrong Court. Section 14 in clear terms indicate that while computing the period of limitations, such pendency of proceedings before a Court without jurisdiction shall stand excluded.

7.For the aforesaid reason, I do not find any necessity to recall the orders made by this Court on 27.09.2024 and accordingly, these applications shall stand rejected.

07.01.2025

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