A.No.375 of 2026

in

Arb. OP (Com.Div) DR.No.48982 of 2024

MASTER

10.02.2026

ORDER

1.This application is filed to condone the delay of 346 days in filing the present application in A.No.3671 of 2024 in Arb.OP.SR.No.48982 of 2024.

2.This court heard the learned counsel on record for the applicant and perused the available materials. The learned counsel for the applicant submitted that they have paid the cost on 03.09.2024 and complied with the conditional order passed by this court in A.No.3671 of 2024 but due to unforeseen circumstances the cost memo was not filed in time and A.No.3671 of 2024 was dismissed for non-compliance of the conditional order.

3.Now the point for determination is whether the delay of 346 days in filing the application to restore A.No.3671 of 2024 is to be condoned or not ?

4.It is needless to say that the Arbitration and conciliation Act is a special Statue which contains limitation period in itself to prefer original petition to set aside the arbitral award. Section 34(3) of the "Arbitration and Conciliation Act" runs as follows

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

5. From the provisions of the Act itself it is clear that Section 34 application to set aside the arbitral award cannot be filed after 3 months and if sufficient cause is shown it can be received within a further period of 30 days and not thereafter.

6. At this stage this court recollects the order of our Hon'ble High Court passed in **IndusInd Bank Limited Vs. Joseph Rajan Fernandes** O.S.A.Nos. 420 to 425 of 2011 reported in 2016 SCC Online Madras 26083 wherein our Hon'ble Apex Court held that "*4. In our view none of the above facts have emerged from the impugned order. It is trite to say that delay in refiling an Arbitration matter cannot be treated routinely when there is no provision for condonation of delay in case of the delay in filing being beyond the period of 120 days. The aspect of delay in refiling has been dealt with by the Division Benches of Delhi High Court taking into account the judicial precedents of the Hon'ble Supreme Court, in which the Special Leave Petition filed was dismissed, in National Project Construction Corporation Ltd., vs. Sadhu Singh and Company (2013) ILR I Delhi 99), and the discussion in this behalf qua the earlier Judgment is contained as under:*

"2. We have observed in the case of Union of India v. Jia Lall Kishori Lall (P) Ltd., and Another (FAO(OS)334/2012) decided on 27.07.2012 as follows:

We may notice that the aspect of delay in re-filing in matters pertaining to objections to award has received the attention of this Court. This is so as by inordinate delay in refiling, a party cannot be permitted to do what it otherwise is not entitled i.e., the period of limitation operating in view of the provisions of the said Act. The views expressed by the Division Bench in the case of The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co., and other connected matters; MANU/DE/3065/2010: 2010 (120) DRJ 615, deal with this issue. There a finding *has been reached that delay in re-filing is not to be condoned in routine. A special leave petition filed in one of the connected matters to The Executive Engineer (Irrigation and Flood Control) v. Shree Ram Construction Co's case (supra) against the said order stands dismissed on merits after condoning the delay. The Division Bench after taking into account the pronouncement in Union of India v. Popular Construction Company; MANU/SC/0613/2001: (2001) 8 SCC 470 observed that in matters of condonation of delay in re-filing the petition, a stricter scrutiny, than is done while considering an application for condonation of delay filed under Section 5 of the Limitation Act, 1963, has to take place keeping in mind that the total permissible period within which the application can be permitted to be filed under Section 34 of the said Act is 3 months plus an additional 30 days under Section 34(3) of the said Act. Thus, if the delay in refiling exceeds this period, then the scrutiny becomes more rigorous and there has to be satisfactory and credible explanation for the delay. Otherwise, the legislative object of not permitting delayed objections from being filed gets defeated."*

7.This Court reiterates the same words that if the delay in re-filing exceeds this period, then the scrutiny shall be more rigorous and there has to be satisfactory and credible explanation for the delay. Otherwise, the legislative object gets defeated. When the parties opted for ADR mechanism, they should have been vigilant in following the rule of limitation as contemplated in the Act. If the original petition is returned for defect and the petitioner is dormant in refiling the original petition after its return without any valid reason, it is for him to face the consequences and suffer.

8.In the case in our hand, the original petition has been filed within time and it is true that this Court has passed a conditional order dated 25.07.2024 in A.No.3671 of 2024 directing the applicant to pay a cost of Rs.2,000/- into the Hon’ble Chief Justice Relief Fund within four weeks but the applicant failed to comply with the said order and A.No.3671 of 2024 was dismissed on 04.09.2024 for non-compliance of conditional order. When the original petition has been taken under Section 34 of Arbitration and Conciliation Act, 1996 the applicant should have been vigilant in following the case. The applicant cannot be permitted to come leisurely before the Court. When there is a special statute in which there is a special provision of limitation, the rule is to follow the same. It cannot be diluted by colouring the delay in filing as a delay in refiling.

9.At this stage Court bring its attention to one another judgment rendered by our Hon'ble High Court in Commercial Division reported in **2019 SCC Online Mad.5586**

The relevant extracted portion is hereunder:

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 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 was away the principle underlying ADR Mechanism. Though this Court has no hesitation in holding that O.P.Diary No.18377 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.*

In the light of all that have been set out supra, instant OP is clearly barred by limitation and the same is dismissed as not maintainable. No costs.

10. The object of the provision itself is to control the period to file the petition under Section 34 of the Arbitration and Conciliation Act within 3 months plus 30 days and not thereafter. If the petition under Section 34 of the Arbitration and conciliation Act is returned for defects, it is the duty of the petitioner to represent the same within the time or with sufficient cause for the delay. The petitioner cannot be permitted to keep the returned case papers in his custody and represent the same according to his whims and fancies. If this kind of delay is condoned mechanically definitely it will ruin the ADR mechanism.

11. The applicant's counsel is well aware of the conditional order passed by this court in A.No.3671 of 2024 dated 25.07.2024 and he very well knows if the conditional order is not complied with the application in A.No.3671 of 2024 will get dismissed. Even after dismissal of the said application on 04.09.2024, the applicant was dormant and did not file any set aside and restoration application to restore A.No.3671 of 2024 within 30 days. Now the applicant has come forward with this application stating that he has paid the cost and complied with the conditional order dated 25.07.2024 in A.No.3671 of 2024. But on perusal of the records, it is seen that the conditional order in A.No.3671 of 2024 dated 25.07.2024 is to pay the cost into the Hon’ble Chief Justice Relief Fund within 4 weeks which falls on 21.08.2024 but as per the receipt dated 03.09.2024 issued by the Section Officer (Accounts), High Court, Madras it is seen that the cost was paid only on 03.09.2024 which is after the expiry of the time stipulated by this court and the cost memo was filed into the Registry on 06.09.2024 that is after the dismissal of A.No.3671 of 2024 on

04.09.2024. Moreover, the applicant has not spelt out any single reason for the delayof 346 days in filing the application to restore A.No.3671 of 2024 except mere averment that he has complied with the conditional order passed by this court in A.No.3671 of 2024 dated 25.07.2024 which also cannot be treated as proper complianceas discussed above. In view of the above discussion, this Court is not inclined to allow this application.

In the result, this application is dismissed. No cost.

MASTER