

(2013) 10 MAD CK 0216

In the Madras High Court

Case No : C.R.P.(NPD) Nos. 2193 & 2194 of 2013 & M.P. Nos. 1 & 1 of 2013

Oil & Natural Gas Co. Ltd.

APPELLANT

Vs

Brick Steel Enterprises

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 1 MadWN(Civil) 337

Hon'ble Judges : B. Rajendran, J.

Bench : Single Bench

Advocate : G. Masilamani, Senior Advocate for King & Patridge, Advocate, for the Petitioner; K. Bijai Sundar, Advocate, for the Respondents No. 1

Final Decision : Disposed Off

Judgement

B. Rajendran, J.—Oil and Natural Gas Co. Ltd., hereinafter called as Corporation (for short), has come forward with these two Civil Revision Petitions questioning the correctness of the Order dated 25.7.2012 passed in I.A. Nos.434 & 435 of 2012 in O.P. No.3 of 2008 by the learned Additional District Judge at Karaikal, by which the Applications filed by the Corporation for condoning the delay of 218 days in filing the Petitions to set aside the Order of Dismissal for default passed on 4.7.2011 in Ar.O.P. Nos.2 & 3 of 2008 were dismissed.

2. As the issue involved in both the Civil Revision Petitions and the parties to the Civil Revision Petitions are one and the same, by consent of Counsel for both sides, both these Petitions are taken up together for final disposal.

3. The Arbitration Original Petitions have been filed by the Corporation challenging the Award passed by the Second Respondent/Arbitrator in Ar.O.P. Nos.2 & 3 of 2008. Since there was no representation made on behalf of the Corporation, the Ar.O.P. Nos.2 & 3 of 2008 were dismissed for default on 4.7.2011. For setting aside the Order dated 4.7.2011, the Corporation has filed I.A. Nos.434 & 435 of 2012 under Section 5 of the Limitation Act to condone the delay of 218 days in filing the Petitions to set aside the Order dated 4.7.2011.

4. In the Affidavit filed in support of the I.A. Nos.434 & 435 of 2012, it was contended on behalf of the Corporation that the Arbitral proceedings were conducted by one Anand, an Advocate from Chennai. While so, when the case was posted for hearing on 4.7.2011, the Counsel from Chennai did not appear and therefore, both the Ar.O.P. Nos.2 & 3 of 2008 were dismissed for default on 4.7.2011. According to the Corporation, the non-appearance of the Counsel from Chennai on 4.7.2011 is neither wilful nor wanton but due to unavoidable circumstances. It is further stated that on 4.7.2011, the Authorised Signatory of the Corporation also could not appear before the Court below as he had to attend an urgent meeting on that date. Further, the advocate from Chennai did not also intimate the Corporation about the Order dated 4.7.2011 passed by the Court below. The Corporation came to know about the Order dated 4.7.2011 only through the local Counsel. In the meantime, the previous legal officer of the Corporation also transferred and therefore, there was a delay of 218 days in filing the Petitions to set aside the Order dated 4.7.2011. It is also contended that the delay in filing the Petitions is also attributable due to administrative reasons and therefore the Corporation prayed for allowing the Petitions by condoning the delay.

5. The First Respondent resisted the Application by stating that the Original Petitions have been filed during the year 2008. During the pendency of the Arbitration Original Petitions, the Corporation has filed I.A. No. 1285 of 2009 seeking permission of the Court to file additional grounds for which Additional Counter was also filed by the First Respondent herein. Subsequently, when the Original Petitions were posted for enquiry on 8.9.2010, on behalf of the Corporation, a Memo was filed for return of the original documents for indexing, but the same were not re-presented by the Corporation. After several adjournments, when the Original Petitions were posted for enquiry finally on 4.7.2011, there was no representation made on behalf of the Corporation and therefore the Original Petitions were dismissed on that day. The reason assigned by the Corporation that the Counsel from Chennai did not appear before this Court and that the Authorised Signatory had to attend an urgent meeting are untenable and they are not substantiated by any documentary evidence. The Corporation is fully aware of the Order dated 4.7.2011 through their local Counsel, but the Petitions were not filed immediately. The reasons assigned by the Corporation for condonation of delay is unacceptable. Therefore, the Respondent prayed for dismissal of the Applications seeking condonation of delay.

6. The Applications filed by the Corporation for condonation of delay were taken up for hearing and the Court below, after analysing the rival contention dismissed the Applications by holding that though the Affidavit refers to some administrative reasons for the delay, there is no explanation given by the deponent for each and every days delay. The Court below also pointed out that the Corporation was not diligent in pursuing their remedy at the earliest point of time and that the reasons adduced by the Corporation are not convincing. By holding so, the Court below dismissed the Petitions for condonation of delay of

218 days in filing the Petitions to set aside the Order dated 4.7.2011.

7. The learned Senior Counsel appearing for the Revision Petitioner would contend that the delay in filing the Petitions to set aside the Order dated 4.7.2011 had occurred due to unavoidable circumstances. The delay is also attributable to administrative reasons. The Corporation had entrusted the case to a Counsel from Chennai and due to his non-appearance the Original Petitions were dismissed on 4.7.2011. The Corporation also clearly pointed out that the Counsel from Chennai also did not intimate the Corporation regarding the Order passed on 4.7.2011 and the Corporation came to know the order only through their local Counsel. According to the learned Senior Counsel for the Corporation, in matters of this nature, the Court need not consider the number of days of delay but the reasons adduced thereof, which is the determinative factor required for consideration by this Court. In any event, the Corporation has assigned reasons for condonation of delay of 218 days and the intention of the Corporation is not to drag on the proceedings. It is, therefore, submitted that for the mistake committed by the Counsel engaged by the Corporation, the Corporation should not be penalised. It is further pointed out that an opportunity must be given to the Corporation to pursue their legal remedy especially when the Arbitrator has passed an Award directing the Corporation to pay a huge sum Rs. 49,76,065/- and Rs. 8,92,573/- respectively.

8. On the other hand, the learned Counsel for the First Respondent would contend that the Corporation was not diligent enough in prosecuting the Original Petitions which resulted in the dismissal of the Original Petitions on 4.7.2011. The Corporation was given many opportunities to prosecute the Petition but those opportunities have not been availed by the Corporation. When the Corporation appointed local Counsel were very much available, they could have represented and continued the proceedings and the averment that the matter was entrusted to a Counsel from Chennai, who did not appear on 4.7.2011 which resulted in the dismissal of the Original Petitions is untenable. It is also submitted by the learned Senior Counsel for the Corporation that the Corporation has a good case to be agitated on merits and therefore, an opportunity must be given to the Corporation to agitate its case on merits. Therefore, the learned Counsel for the First Respondent prayed this Court to dismiss the Civil Revision Petitions.

9. I heard the Counsel for both sides and perused the materials placed on record. The short point for consideration in these Civil Revision Petitions is whether the delay of 218 days in filing the Petitions to set aside the order dated 4.7.2011 filed by the Corporation can be condoned and whether sufficient reasons have been assigned by the Corporation for condonation of such delay.

10. On careful reading of the orders, which are impugned in this Civil Revision Petitions, the Court below came to a conclusion that the delay could not be condoned because there is no explanation offered by the Corporation for each and every day's delay. The Court below also pointed out that merely stating

administrative reason for the delay cannot be a sufficient ground for condoning the delay. It was also pointed out that when there is a local officers available, the Corporation ought to have taken steps to immediately file a Petition to set aside the Order dated 4.7.2011 passed in the Original Petitions and that therefore, the delay could not be condoned.

11. When we read the Affidavit filed in support of the Petitions for condonation of delay, it is evident that the Court below dismissed the Original Petitions for non-appearance of the Counsel on behalf of the Corporation. It is true that on 4.7.2011 when the Original Petitions were taken up for enquiry, the Counsel from Chennai, engaged by the Corporation, did not appear. The local Counsel engaged by the Corporation also did not appear before the Court below on 4.7.2011. According to the Corporation, after dismissal of the Original Petitions, the Advocate from Chennai, who was looking after the case did not inform the Corporation and that they came to know about it only through the local Counsel. It is also submitted that the Authorised Signatory of the Corporation, who has to sign the Affidavit, was transferred and this has also led to the delay. The Corporation has specifically pleaded that for filing the Affidavit and Petition to set aside the Order dated 4.7.2011, some administrative decisions have to be taken up and this also contributed to the delay. Thus, the Corporation has not assigned a single reason for the delay, but there were more than one reasons assigned. I also find that the delay of 218 days in filing the Petition for setting aside the Order dated 4.7.2011 cannot be regarded as extraordinary or inordinate.

12. The learned Senior Counsel appearing for the Revision Petitioner relied on the decision of the Honourable Supreme Court reported in Ram Nath Sao @ Ram Nath Sahu and others v. Gobardhan Sao and others, 2002 (1) CTC 769, wherein the Honourable Supreme Court has dealt with the meaning and expression of "sufficient cause" and in Para-12, it was held as follows:

"12. Thus is becomes Plaint that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22, Rule 9 of the Code or any other similar provision should received a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case, "[here cannot be a straitjacket formula or accepting or rejecting explanation for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the Petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal on exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter, the Courts should not lose sight of the fat that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning the delay in a routine like manner. However, by taking a pedantic and

hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the his terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

13. In the above decision, the Honourable Supreme Court held that the Courts should not condone the delay as a matter of routine. It was further held that by taking a pedantic and hyper-technical view, the explanation offered for condonation of delay should not be rejected especially when it will cause enormous loss and irreparable injury to the party against whom the Us terminates either by default or inaction and defeating valuable right of such a party to have the decision on merits. Relying on the above decision, the learned Senior Counsel for the Corporation would contend that by dismissal of the Petitions for condonation of delay, a valuable right accrued to the Corporation has been denied and the Court below ought to have applied the liberal approach theory while considering the Applications for condonation of delay.

14. The learned Senior Counsel appearing for the Revision Petitioner-Corporation also relied on the decision of the Honourable Supreme Court reported in N. Balakrishnan v. M. Krishnamurthy, 1998 (2) CTC 533, to contend that length of delay is immaterial so long as delay is properly explained by the Applicant. In the above decision, the Honourable Supreme Court held in Para Nos. 12 & 13 as follows:

"12. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy properly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public Policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tectics but seek their remedy properly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

13. A Court knows that refusal to condone the delay would result in foreclosing a suit or from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal

construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749."

15. It is evident from the decision of the Honourable Supreme Court that Rules of limitation are not meant to destroy the right of parties, but they are meant to see that the parties do not resort to dilatory tactics and seek their remedy properly and legal remedy must be kept alive for a legislatively fixed period of time. It was further held that there is no presumption that delay in approaching the Court is always deliberate. It was further held that explanation for delay should be given utmost consideration and such explanation does not smack of mala fides and to ensure that it is not put forth as part of a dilatory strategy. It was further held that when the Courts condone the delay due to laches on the part of the Applicant, the Court shall compensate the opposite party of his loss.

16. The learned Senior Counsel for Corporation also relied on the decision of the Honourable Supreme Court reported in *Municipal Corporation, Gwalior v. Ramcharan (D) by L.Rs. and others*, 2002 (2) CTC 349, wherein it was held that failure of Advocate to appear before the Court due to wrong noting of date of hearing, belated knowledge of such Judgment by municipal Corporation was adduced as reason for delay which warrants taking a liberal approach and not a right and too technical a view of the issue to condone the delay.