2023:KER:81490

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH AGRAHAYANA, 1945

ARB.A NO. 26 OF 2023

AGAINST THE ORDER DATED 10.12.2019 IN OP(ARBITRATION) NO.749/2019

OF DISTRICT COURT, KOZHIKODE

APPELLANTS/PETITIONERS/RESPONDENTS:

1 MATHEW P J
AGED 50 YEARS
S/O. JOSEPH P J, PONNAMPAYI HOUSE,
KOODARANHI P.O., KOZHIKODE, PIN - 673604

2 THOMAS P J
AGED 60 YEARS
S/O. JOSEPH P J, PONNAMPAYI HOUSE,
KOODARANHI P.O., KOZHIKODE, PIN - 673604

BY ADVS.
T.G.RAJENDRAN
T.R.TARIN

RESPONDENT/RESPONDENT/CLAIMANT:

M/S. CHOLAMANDALAM INVESTMENT AND FINANCE CO LTD
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
DARE HOUSE NO.2, N S C BOSE ROAD PARRYS,
CHENNAI, PIN - 600001

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION ON 19.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2023:KER:81490

CR

A.BADHARUDEEN, J.

Arb.A. No.26 of 2023

&

C.M.Appl. No.1 of 2023

Dated, this the 19th day of December, 2023

JUDGMENT

Arb.Appeal No.26 of 2023

This appeal arose out of O.P.(Arbitration) No.749/2019 on the files of the District Court, Kozhikode, challenging dismissal of the above original petition by the District Judge, Kozhikode. Appellants are the original petitioners in the Original Petition.

C.M.Appl.No.1 of 2023

This is a petition filed under Section 5 of the Limitation Act for condoning delay of 1306 days in filing the Arbitration Appeal.

2. Heard the learned counsel for the appellants on admission. The learned counsel pressed for condonation of delay of 1306 days in filing the appeal and admission of this appeal for hearing.

3. The reasons stated in the affidavit in support of the petition to condone the delay are as under:

> *"2. The above Appeal was filed challenging the Order in IA No. 2886/2019 in OP Arbitration No. 749/2019 on the files of the District Judge, Kozhikode, confirming the order in ACP No. (Chola) 5435 of 2014 on the files of the Arbitrator, Adv. G. Ashokapathy, wherein the Appellant was set exparte and was directed to pay an amount of Rs. 2.07,555/- along with interest. The Arbitration award was passed without hearing the Appellant and the award was not also communicated.*
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> *3. I have entrusted the matter for filing the appeal with the counsel at Kozhikode and the counsel has filed appeal also with an application for condoning delay. The court below dismissed the application for condonation of delay and consequently the Arbitration OP was also dismissed. Even though the case was dismissed as per order dated 10.12.2019 the same was not communicated*

to me by the counsel and I came to know about the same only when the Respondent finance company initiated recovery proceedings. On coming to know about the same I filed an application for getting the certified copy of the order on 23.09.2023 and the stamp was called on 26.03.2023 and the same was produced on 27.09.2023. The copy was ready on 29.9.2023 and the same was taken delivery on 30.09.2023. The appeal ought to have been filed on or before 9.3.2020. Due to the above said reason now there is a delay of 1306 days in filing the appeal. If the delay in filing the appeal before this Hon'ble Court is not condoned the same will cause severe hardship and financial difficulty to me and other Appellant."

4. On perusal of the reasons, it is emphatically clear that as early in the year 2014, arbitration proceedings commenced before the Arbitrator and the same was allowed as against the petitioners/appellants, since the appellants herein, who are the respondents in the above arbitration proceedings, did not contest the matter.

5. After having noticed and received the award

against the appellants in time, the appellants remained silent for about 1781 days in preferring the first appeal before the District Court. Consequently, O.P.(Arbitration) No.749/2019 was dismissed as per order dated 10.12.2019, after dismissing I.A.No.2886/2019, which was filed to condone delay of 1781 days. Now the present appeal, challenging the said order, has been filed along with the delay of 1306 days.

6. The questions to be answered are;

1. Whether Section 5 of the Limitation Act has application to condone delay in filing a petition under Section 34 of the Arbitration and Conciliation Act?
2. What is the maximum period available to a party to an arbitration proceeding to challenge an award passed by the Arbitrator by invoking Section 34 of the Arbitration and Conciliation Act?

7. Insofar as challenge against arbitration award is concerned, the same is in accordance with Section 34 of the Arbitration and Conciliation Act, since specific period of

limitation is provided therein. Therefore, Section 5 of the Limitation Act has no application to condone delay in filing a petition under Section 34 of the Arbitration and Conciliation Act. Section 34 of the Arbitration and Conciliation Act provides appeal to set aside an award. Section 34(3) provides as under:

> "*(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 request 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."*

8. Thus, it is emphatically clear that when the special statute provides specified period of limitation, Section 5 of the Limitation Act has no application. A conjoint reading of Section 34(3) of the Arbitration and Conciliation Act along

with its proviso makes the position emphatically clear that challenge against an arbitral award beyond 4 months cannot be entertained, as the said claim is barred by limitation. Therefore, the remedy by way of challenge provided under Section 34 of the Arbitration and Conciliation Act is time barred and the challenge against dismissal of the original petition filed under Section 34 being time barred is liable to fail. Therefore, this appeal filed challenging dismissal of the delay petition filed beyond the period provided under Section 34(3) read with its proviso and the delay in filing the Arbitration Appeal cannot be condoned. Accordingly, C.M.Appl.No.1 of 2023 stands dismissed.

Consequently, Arbitration Appeal also stands dismissed as barred by limitation.

Sd/-
A. BADHARUDEEN
JUDGE

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