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D. GOPINATHAN PILLAI
v.
STATE OF KERALA AND ANR.

JANUARY 15, 2007

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[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Arbitration Act, 1940:

C

*Application for setting aside award—3320 days delay in filing—
Condoned by civil court—High Court declining to interfere—Held, delay
cannot be condoned without assigning any reasonable, satisfactory,
sufficient and proper reason—Orders of Civil Court and High Court set
aside—Delay/Laches—Delay in filing application for setting aside award.*

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Respondent-State Government filed an application for condoning 3320 days delay in filing the application for setting aside the award. The civil court allowed the said application observing that officers of the State Government committed gross negligence in not filing the objection for such a long time but the Government should not be penalized for their fault. The High Court dismissed appellant's revision petition.

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Allowing the appeal, the Court

HELD:

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There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in catena of cases. [Para 5] [906-B-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 220 of 2007.

From the final Judgment and Order dated 13.12.2005 of the High Court of Kerala at Ernakulam in C.R.P. No. 1177/2005.

T.L. Viswanatha Iyer, T.G. Narayanan Nair, for the Appellant.

R. Sathish, for the Respondents.

The Judgment of the Court was delivered by

Dr.AR.LAKSHMANAN, J. : 1. Leave granted.

2. Heard Mr. T.L.V. Iyer, learned senior counsel for the appellant and Mr.R.Sathish, learned counsel for the respondents.

3. This appeal is directed against the order passed by the learned Single Judge of the High Court dt.13.12.2005 in C.R.P.No.1177 of 2005. Before the High Court, it was submitted by the appellant herein (D.Gopinathan Pillai) that the delay in filing an application for setting aside the award was only 30 days and there was absolutely no explanation for the inordinate delay of 3320 days in filing the appeal. The High Court without going into the merits of the delay petition has, however, observed that the application to set aside the award is ultimately dismissed then the appellant cannot be said to be aggrieved and that if the said petition is ultimately allowed and the arbitral award passed in favour of the appellant is set aside then his remedy is to file an appeal under Section 39 of the Arbitration Act, 1940 and that the appellant can challenge the impugned order in that appeal, in case, the petition to set aside the award happened to be decided against the appellant. Reserving the said right to the appellant, the Civil Revision Petition was dismissed by the High Court.

4. Our attention was also drawn to the order passed by the Principal Sub Judge, Thiruvananthapuram dt.30.09.2005 in I.A.No.1309/2005 in O.P.(Arb.) 78/1995 which was filed by the State of Kerala against the appellant herein. The court has considered whether the delay of 3320 days in filing the petition to set aside the award can be condoned. We have perused the entire order. However, without assigning any acceptable reason, Principal Sub Judge, Thiruvananthapuram has condoned the inordinate delay of 3320 days and allowed the I.A. filed by the State of Kerala. While condoning the delay, the learned Sub Judge has also observed that the officers of the State of Kerala has committed gross negligence in not filing

A the objection for a long period of 3320 days and, therefore, for the fault of the officers, the State should not be penalised.

B 5. We are unable to countenance the finding rendered by the Sub Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.

No costs.

R.P.

Appeal allowed.