

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.02.2026

Pronounced on: .02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.6311 of 2025
and CMP. No.31288 of 2025**

M/s.KKK Regence Developers,
Door No.29, 5th Floor, Old Madras Road,
Bhattrahalli, Banhaluru - 560 049.

Petitioner(s)

Vs

- 1.M/s.The Government Tele Communication
Employees Co-operative Society Limited,
Rep. by its President and Secretary,
Regd. Office: No.37A, Sembudoss Street,
Chennai - 600 001.
- 2.Mr.S.Elangovan
- 3.Mrs.K.Jayalakshmi
- 4.Mr.Nanda Kishore
- 5.Mr.K.M.Ashwin Kumar

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to pass an order setting aside the order dated 08.10.2025 in I.A. No.1 of 2025 in CMA (SR) No.5260 of 2025.

For Petitioner : Mr.S.Arjun Suresh

For Respondents : Mr.T.Sundaranathan
for Mr.Surendra Kumar Panda for R1
No Appearance for R2 to R5



ORDER

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The Revision Petitioner challenges the dismissal of a condone delay application in preferring an appeal against an order passed under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'Act')

2. I have heard Mr.Arjun Suresh, learned counsel for the petitioner and Mr.T.Sundaranathan for Mr.Surendrakumar Panda, learned counsel for the contesting first respondent.

3. The learned counsel for the petitioner, Mr.Arjun Suresh would bring to my notice that in a pending suit in O.S. No.113 of 2021, an Application was filed in I.A. No.1 of 2024, under Section 8 of the Arbitration and Conciliation Act, in and where by the revision petitioner, as defendant, took out an application to refer the suit to Arbitration. The Trial Court dismissed the Application by order dated 14.03.2024. After receipt of the copy of the order on 12.04.2024, according to the learned counsel for the petitioner instead of preferring an appeal before the District Court, by mistake, filed an Appeal before this Court, along with an application to condone the delay of 37 days in filing the appeal. Inviting my attention to the order passed by this Court on 05.03.2025, rejecting the appeal, learned counsel for the petitioner would state



that this Court has made it clear that the petitioner would be entitled to take out an Application under Section 14 of the Limitation Act, 1963 to exclude the time taken before the High Court in prosecuting the matter.

4. The learned counsel would further state that thereafter, after receipt of the copy of the order passed by this Court, within a period of one month, without any undue delay, the appeal was preferred before the learned District Judge along with an application seeking to condone delay of 37 days. He would therefore state that there is no willful or malafide inaction on the part of the petitioner and in the light of the liberty granted by this Court to exclude the time spent or lost before this Court, by wrongly knocking at the doors of this Court, the learned counsel contends that the learned District Judge ought to have construed the request liberally and condoned the delay, in order to afford a fair opportunity to the petitioner to challenge the order dismissing the Section 8 Application.

5. Per contra, learned counsel for the first respondent Mr.T.Sundaranathan, would firstly state that the petitioner is a partnership Firm and all its partners have already been set exparte and therefore, the petitioner has no legs to stand to even sustain the challenge by way of the revision petition. He would further state that the partners have also not joined the filing



of the revision petition and it is fatal to the case of the revision petitioner. Even on the aspect of delay, the learned counsel for the first respondent would state that the petitioner has not re-filed the papers that were incorrectly filed before this Court and take advantage of Section 14 of the Limitation Act and instead the petitioner has filed an independent application for condonation of delay, that too, arbitrarily fixing the delay as 37 days. According to the learned counsel for the first respondent, the delay is much more and can never be 37 days, which is a figment of imagination of the petitioner alone. He would therefore state that the Trial Court has rightly factored all these aspects and dismissed the condone delay application. He would therefore pray for the dismissal of the revision petition.

6. I have carefully considered the submissions advanced by the learned counsel on either side.

7. As regards the partners being set exparte and the revision at the instance of the Firm not being maintainable, I find that in the suit in O.S. No.113 of 2021, the petitioner Firm has been arrayed as the first defendant and its partners are arrayed as defendants 2 to 5. Admittedly the partners remained exparte and the same is not disputed even by the learned counsel for the petitioner. However, an Application was taken out only by the first defendant,



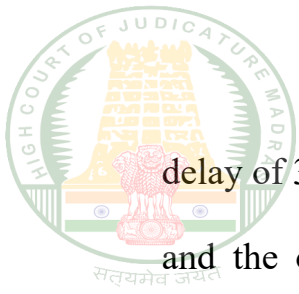
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partnership Firm, represented by one of its partners, under Section 8 of the Act, contending that an Arbitration Agreement existed in the MOU dated 01.05.2015, read with supplementary agreement dated 09.12.2016, entered into between the parties and therefore, the suit cannot be continued and the parties would have to necessarily go for arbitration. The said Application, on contest, was dismissed by the Trial Court. Though an Appeal is provided as against the said order before the District Court, the petitioner preferred an Arbitration Appeal before this Court in Arbitration Appeal in SR. No.107797 of 2024. As the appeal had not been filed in time, an application to condone delay of 37 days was also filed. This Court by order dated 05.03.2025, finding that the order refusing to refer the parties to arbitration under Section 8 of the Act, was appealable under Section 37 of the Act and the proper course of action was to prefer a regular Appeal before the District Court and not the High Court, dismissed the Arbitration Appeal, even at the condonation of delay stage. However, this Court directed the Registry to return the appeal papers with a further direction to the petitioner to re-present it before the appropriate Court in terms of Section 37(1) of the Arbitration Act. This Court also made it clear that the petitioner would be entitled to exclude the time taken before this Court in prosecuting the matter, by filing an appropriate application under Section 14 of the Limitation Act, 1963.



8. As already discussed herein above, though liberty was given to the petitioner to re-present the same papers filed before this Court in Arbitration Appeal SR. No.107797 of 2024, for reasons best known to the petitioner, the petitioner did not re-present the appeal and instead chose to file an independent appeal before the learned District Court, along with an Application seeking condonation of delay of 37 days. In the affidavit filed in support of the said application, the petitioner had merely referred to the trajectory of the case culminating in the liberty granted by this Court in the Arbitration appeal proceeding and has therefore, stated that he is entitled to the benefit of Section 14 of the Limitation Act and the delay of 37 days in preferring the appeal has to be condoned.

9. The said application was strongly resisted by the first respondent stating that the very Section 8 Application itself, in the absence of the partners joining the Application is not maintainable. Further, the partners have already been set exparte and consequently, the Appeal itself is not maintainable and there was no necessity to entertain the condone delay application. Even as regards the delay of 37 days, it has been contended by the first respondent that the order dismissing the Section 8 Application was passed on 14.03.2024. Admittedly, the petitioner received the order copy on 12.04.2024, however, the Arbitration Appeal before the High Court was filed only on 13.08.2024, with a



delay of 37 days. This Court disposed of the revision by order dated 05.03.2025 and the order was also uploaded in the High Court website on 06.03.2025.

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Despite of the above, the appeal was preferred only on 24.04.2025. It is therefore, the submission of the learned counsel for the respondent that the delay is more than 375 days and not a mere 37 days and even if the benefit of Section 14, has to be given to the petitioner, then also 223 days alone could have been excluded, which still left the petitioner with a delay of 152 days. The learned counsel would also state that the learned District Judge has also taken note of the fact that the petitioner has not even filed a proper affidavit and the affidavit contained a number of blanks and therefore, on all these grounds, the petitioner was not suited. He would therefore pray for dismissal of the revision petition.

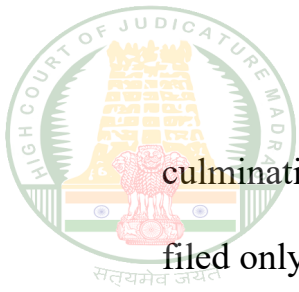
10. I have carefully considered the submissions advanced by the learned counsel for the parties. I have also gone through the records.

11. Insofar as the first submission regarding the maintainability of the Section 8 Application itself, I find force in the submission on the learned counsel for the first respondent. A partnership Firm does not have a separate legal entity. It is settled and trite law that in any legal action, all the partners will have to necessary be arrayed as parties. Curiously, even in the Section 8



Application, the Firm is represented by one of its partners and the remaining partners have been arrayed as respondents. In the suit as well as in the said Application, the partners remained exparte.

12. All the partners have been arrayed as respondents. But one Nandha Kishore, has represented the petitioner Firm and he arrayed himself as the fourth respondent. I am unable to see, how such an Application could have even been maintained before the Trial Court. Be that as it may, I do not find any merit in the revision even otherwise. No doubt, the petitioner, being aggrieved by the dismissal of the Section 8 Application, to refer to the parties for Arbitration, preferred an Arbitration Appeal before this Court instead of filing a statutory Appeal before the District Court concerned. This Court by order dated 05.03.2025, gave liberty to the petitioner to re-present the Arbitration Appeal papers before the competent Appellate Court. However, without doing so, the petitioner filed a separate Appeal before the District Court, along with an application for condonation of delay. The petitioner sought for condonation of 37 days in the said application filed before the District Court. There is absolutely no explanation with regard to the manner in which the petitioner has arrived at the delay to be 37 days. Curiously, the very same delay of 37 days, was sought to be condoned while preferring the Arbitration Appeal before this Court as well. I am unable to understand how the delay would be freezed at the very same 37 days, despite passage of further time and proceedings



culminating before this Court on 05.03.2025 and thereafter, the Appeal being filed only on 24.04.2025.

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13. No doubt, this Court held that the petitioner would be entitled to take benefit of Section 14 and seek exclusion of the period lost before this Court in prosecuting the Arbitration Appeal erroneously. However, in the affidavit filed in support of the Application for condonation of delay of 37 days, the petitioner has attempted to explain the very same delay of 37 days in preferring the Arbitration Appeal before the High Court. Section 14 of the Limitation Act, is extracted for easy reference:

" 14. Exclusion of time of proceeding bona fide in Court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a



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fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.
Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) mis-joinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction. "

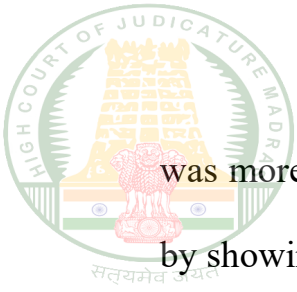
14. The Three Judge Bench of the Hon'ble Supreme Court in *Consolidated Engg. Enterprises and Ors Vs. Principal Secretary, Irrigation Department and Others*, reported in (2008) 7 SCC 169, discussing the object and purpose of enacting Section 14, held that the person seeking condonation, by exclusion of time in proceeding bonafide, in a Court without jurisdiction, has to satisfy five conditions viz., (i) *Both prior and subsequent proceedings are Civil proceedings prosecuted by the same party;* (ii) *The prior proceedings had been prosecuted with due diligence and in good faith;* (iii) *The failure of the prior proceedings was due to defect of jurisdiction or other cause of like nature;* (iv) *the earlier proceeding and the latter proceeding must relate to the same matter in issue and;* (v) *Both the proceedings are in a Court*, and that if all these conditions are satisfied the Court has to adopt a liberal approach in order to advance the cause of justice, rather than abort the proceedings, as the provisions



are entitled to provide relief against the bar of limitation, where the parties selects a wrong forum.

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15. Though the petitioner can be said to have satisfied all these conditions, in the present case, it was not good enough, since the petitioner has not availed of the opportunity given by this Court by re-filing the very same appeal papers, in which event, the petitioner may have been justified in explaining only the delay of 37 days in preferring the Arbitration Appeal before this Court initially. However, the petitioner has abandoned the option given by this Court and has instead preferred an independent regular Appeal, along with an application for condonation of delay. In the said application, it was not sufficient for the petitioner to merely explain the delay in prosecuting the matter before this Court. There has been further delays that has been caused which had to be necessarily explained. As rightly pointed out by the learned counsel for the first respondent, even if the delay in prosecuting the appeal before the High Court was factored, there was still a further delay of about 152 days. The learned District Judge has also taken note of the fact that the affidavit itself has been filed in a very causal manner with the dates and days not being mentioned. I am in entire agreement with the submissions of the learned counsel for the first respondent that the delay was not a mere 37 days. There is no infirmity in order of the learned Principal District Judge, rendering a finding that the delay



was more than 37 days and the petitioner has not been able to satisfy the delay,
by showing sufficient cause.

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16. In the light of the above, I am not inclined to interfere with the well
considered order passed by learned Principal District Judge, City Civil Court
and accordingly, this Civil Revision Petition is dismissed. Consequently,
connected Miscellaneous Petition is also dismissed. No costs.

20.02.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Principal District Judge,
City Civil Court, Chennai.



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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.6311 of 2025
and CMP. No.31288 of 2025

20.02.2026



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