



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 3RD DAY OF MARCH, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO. 200857 OF 2023 (GM-CPC)

BETWEEN:

M/S. SAMALA MAREPPA AND SONS,
THROUGH ITS PROPRIETOR,
S.RAMACHANDRA REDDY,
CONTRACTOR, D.NO.202/5,
NEAR RAYADURGA BUS STAND,
BENGALURU ROAD, BELLARY – 585 101.

...PETITIONER

(BY SMT. HEMA.L.KULAKARNI., ADVOCATE)

AND:

1. THE SUPERINTENDING ENGINEER (ELE),
O & M CIRCLE, GESCOM,
OPP.LIC OF INDIA, RAICHUR – 584 101.
2. SOLE ARBITRATOR,
R.V. VENKATACHALAPATI B.A. LL.B (SPL)
ADVOCATE, PLOT NO.72,
ALUVELU RANGAPPA COLONY, PATEL NAGAR,
BELLARY – 583 103.

...RESPONDENTS

(NOTICE TO R1 & R2 DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN
RELEIFS.





THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Smt.Hema L.Kulkarni., learned counsel for the petitioner has appeared in person.

2. The brief facts are these:

The Superintending Engineer (Ele.), Raichur - first respondent filed an appeal under Section 34 of the Arbitration and Conciliation Act in Arbitration Case No.05/2019 on the file of Principal District Judge, Raichur as against the arbitral award passed on 03.05.2019. Since there was a delay, an application under Section 34 (3) of the Arbitration Act read with Section 5 of the Limitation Act for condonation of delay appeal was also filed in I.A.No.II.

After service of notice, the petitioner appeared before the Court and filed a statement of objections to the main petition and also filed objections to I.A.No.II. The petitioner contended that the delay caused is intentional and hence prayed to reject the application and to dismiss the main petition.



Such being the facts, the Trial Court without considering the objections and instead of disposing the application i.e., I.A.No.II, posted the matter for arguments on 17.02.2023 stating that I.A.No.II will be treated along with the main petition.

Under these circumstances, petitioner having left with no other alternative and efficacious remedy, has filed this Writ Petition under Articles 226 and 227 of the Constitution of India.

3. Learned counsel for the petitioner has urged several contentions.

4. Heard, the contentions urged on behalf of the petitioner and perused the Writ papers and also the Annexures with utmost care.

Smt.Hema L.Kulkarni., learned counsel for the petitioner in presenting her arguments vehemently contended that though an application to condone the delay is filed, the same has not been considered by the Trial Court. She argued by saying that the Court instead of passing the order on the application, erroneously passed the order stating that I.A.No.II will be treated along with the main matter and proceeded to



post the matter for arguments. She therefore, submits that appropriate direction may be issued or an order may be passed directing the Trial Court to dispose of the application for condonation of delay at the earliest.

I have perused the order passed by the Trial Court with utmost care. The same is at Annexure-E. A Perusal of the order discloses that instead of considering I.A.No.II for condonation of delay, the Trial Court has erroneously proceeded to conclude that I.A.No.II for condonation of delay will be treated along with the main matter. In my opinion, such an order is unsustainable in law. It is needless to observe that as and when an application for condonation of delay is filed, it is incumbent on the Trial Court to dispose of the application and then proceed further in the matter. I may venture to say that the Trial Court has failed to have regard to relevant considerations and disregarded the relevant matters

Therefore, this Court deem it proper to direct the Trial Court to consider the delay application first and then proceed further in the matter.



Accordingly, this Court directs the Trial Court to dispose of the delay application as expeditiously as possible.

Resultantly, the Writ Petition is ***disposed of***.

**Sd/-
JUDGE**

NB
List No.: 1 Sl No.: 7