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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 05, 2009

Date of Order: May 11, 2009

+ OMP No.237/2009

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11.05.2009

JBS UDYOG LTD.

..... Petitioner

Through: Mr. A. Datta with Mr. Atish Ghosh &
Mr. Niloy Dsgupta, Advs.

Versus

THE AIRPORTS AUTHORITY OF INDIA

..... Respondent

Through: None

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. The petitioner has assailed an award dated 17th December, 2007 by way of this petition under section 34 of the Arbitration and Conciliation Act. In response, the respondent had taken objection that the petition was highly belated and was barred by limitation. The award was passed on 17th December, 2007 and the present petition has been filed on 31st May, 2008, i.e., beyond the period of limitation. The petition is accompanied with an application for condonation of delay. In this application, it is stated that the petition was filed in the month of May, 2008 for setting aside the award dated 17th December, 2007. There were few objections and the petition was returned on 31st May, 2008 for removing them and for refilling them. The summer vacation of the

Court started on 1st June, 2008. The objections were removed and the petition was ready for filing on the opening of Courts. However, the petitioner was a resident of Kolkata and the Advocate who conducted the matter before the Arbitrator also resided in Kolkata. Since the Court vacation had started, the petitioner took the original petition with him to Kolkata to make a paper book for his Advocate. He handed over the original petition to his Kolkata Advocate. The Advocate was getting his office renovated during the vacation. The petition got detached from his other files and became untraceable. After the renovation, when the files were re-arranged the petition was not traceable despite vigorous search. Ultimately, it was found in the store of decided files where it had landed by mistake. The file was traced in the month of April, 2009 and was received in Delhi on 26th April, 2009 and the petition was re-filed immediately after it was received in Delhi on 28th April, 2009.

2. I consider the plea taken by the petitioner for condonation of delay due to circumstances as stated above is not tenable.

3. The award was passed on 17th December, 2007. Three months period as provided under Section 34 expired on 16th March, 2008. Even with an application for condonation of delay, the objections against the award could have been filed maximum by 17th April, 2008. The petition, admittedly, initially was filed in May, 2008. It was therefore highly belated even at the initial instance and is liable to be dismissed on this ground. The plea that the

another order passed by the learned Arbitrator dated 5th April, 2008, was also made subject matter of the challenge is not tenable because by order dated 5th April, 2008, an application for recalling/setting aside the award dated 17th December, 2007 was dismissed by the learned Arbitrator. Once the Arbitrator has passed an award, there is no power of review available with the Arbitrator and the Arbitrator can only correct mistakes as provided in Section 33 of the Arbitration and Conciliation Act, 1996. If an application for review is made that does not extend the period for filing objections against the award. This petition is therefore liable to be dismissed on the ground of being barred by limitation and is hereby dismissed on this ground.

May 11, 2009
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SHIV NARAYAN DHINGRA J.