

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

#11.

+ C.M. 214/2010 & C.M. 215/2010 in FAO 5/2009

ANKUR ENTRPRISES

..... Appellant

Through: Mr. A.K. Srivastava, Mr. Sanjay Verma, Advs.

Versus

UOI & ANR

..... Respondents

Through: Ms. Geetanjali Mohan, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER

06.12.2010

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C.M. 214/2010 & C.M. 215/2010

1. This order shall dispose of the applications under Section 5 of the Limitation Act r/w Section 151 CPC filed by the appellant for condoning the delay in filing of this appeal.

2. The appeal has been filed by the appellant against order dated 31.01.2004 passed by learned ADJ dismissing the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 against the award of the Arbitrator dated 04.05.2001.

3. The ground taken for condoning the delay in the filing of this appeal after more than 4 years stands elaborated in paragraph 3 to 7 of the application which are reproduced hereunder:

"3. That the appellant/petitioner, within the period of limitation, had preferred review application dt. 24.02.2004 before the ld. Court below, which further got rejected/dismissed vide order dated 01.08.2008 by the ld. Court below.

4. That the present appeal/petition filed before the Hon'ble Court on 20.10.2008 after passing of the dismissal/rejection order dated 01.05.2005 in review application vide Misc. No.09/2004 in Suit No.80/2003.

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5. That the appellant/petitioner, by way of filing review application against the impugned order dt. 31.01.2004 till the disposal vide order dt. 01.08.2008, has been in the legal process before competent Court of law and under the provisions of the law and further the review application is a merger and continuity of the petition under Section 34 of the Arbitration and Conciliation Act, 1996 vide suit No.80/2003.

6. That the appellant/petitioner further submits that on account of technicalities in filing the present petition, there has occasioned a delay of four years five months and 20 days in filing the present petition, hence, this application.

7. That no prejudice would be caused to the other side, if the delay in filing the accompanying appeal is condoned, however, on the other hand, if the delay is not condoned in filing the accompanied appeal, the petitioner shall suffer an irreparable loss and injury."

4. The application has been opposed by the respondents.

5. I have heard the parties and perused the application. At the outset, I may observe that no appeal lies against an order dismissing/rejecting a review petition in view of Order XLVII Rule 7 CPC which reads as under:

**"ORDER XLVII
REVIEW**

7. Order of rejection not appealable. Objections to order granting application.—[(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from

appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party."

6. In view of the provisions contained under Order XLVII Rule 7 of the CPC, no appeal lies against the order dismissing review application. In that view of the matter the appellant can also not file an appeal against the original order dated 31.01.2004 that also after a period of more than 4 years and 5 months as mere filing of a review petition cannot provide sufficient cause for condoning the delay in filing the appeal against the original order.

7. It is also a matter of record that the appeal was initially returned with objections and finally, it was filed only on 03.01.2009 that also after a delay of 24 of days in re-filing.

8. Accordingly, the applications for condonation of delay in filing the appeal as well as in refiling are dismissed. Consequently, the appeal is also dismissed.

DECEMBER 06, 2010
'anb'



MOOL CHAND GARG, J