

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

% Reserved on: July 26, 2010

Decided on: November 12, 2010

+1. FAO (OS) 642/2009

M/s Competent Placement Services (Regd.)
Through its Director/Partner,
54, CSC 9, DDA Market (Behind Good Will Market)
Sector 13, Rohini,
New Delhi-110 085 Appellant
Through: Mr. Tameem Hashmi, Advocate

versus

Delhi Transport Corporation
Through its Chairman,
I.P. Depot,
I.P. Extension
New Delhi-110 002 Respondent
Through: Mr. Ajay Verma, Advocate

+2. FAO (OS) 644/2009

M/s ABC Placement Services (Regd.)
Through its Director/Partner
B-57, Sanjay Market Sector 2.
Pocket III, Rohini
New Delhi-110 092. Appellant
Through: Mr. Tameem Hashmi, Advocate

versus

Delhi Transport Corporation
Through its Chairman,
I.P. Depot,
I.P. Extension
New Delhi-110 002 Respondent
Through: Mr. Ajay Verma, Advocate

+3. FAO (OS) 645/2009

M/s. Neelkanth Placement Services (Regd.)
Through its Director/Partner
C-258, LIG, DDA Flats, East Loni Road
Shahdra
Delhi-110 032

.....Appellant

Through: Mr. Tameem Hashmi, Advocate

versus

Delhi Transport Corporation
Through its Chairman,
I.P. Depot,
I.P. Extension
New Delhi-110 002

..... Respondent

Through: Mr. Ajay Verma, Advocate

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. The short issue which arises in these appeals is whether the delay of 372 days in refiling the Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the A&C Act”) should be condoned.

2. The learned counsel for the Appellant in support of the application for condonation of delay had filed her own Affidavit stating her husband's successive surgeries as the reason for delay in refiling. Reliance is placed on *State Bank of India v. Vendanathagal Dairy Farm and Others*, (2000) 10 SCC 538 to seek parity of application of Section 5 of the Limitation Act as applicable to an Application for final decree in foreclosure suit under Order 34 Rule 2(1)(c)(ii), CPC. Relying on *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 it is contended that since the conscience of the Court is shocked by the Award, this Court will not go into the technicalities and will consider the matter on the merits.

3. In the appeals at hand, the awards were published on 6th June, 2008 and the objections thereto were filed on 2nd September, 2008. Thus, the objections were filed within 90 days of the publication of awards. On 2nd September, 2008, the Registry raised the objection that caveat report be obtained and proof of service be filed. After removing objections, the petitions were refiled on 25th November, 2008. This refiling was beyond the period of one week as required by the Registry and 30 days as prescribed by Rule 5(3) in Chapter 1-A(a) of the Delhi High Court Rules. On 25th November, 2008, the Registry raised the objection for filing it properly, as also for filing an application for condonation of delay in refiling, to be refiled within a week. This refiling was done on 9th October, 2009 along with applications for

condonation of delay of 372 days in refiling, supported by the affidavit of the learned counsel. As per the affidavit the cause of delay is stated to be the accident of the husband of the counsel in October, 2007 and subsequent surgeries on 4th July, 2008 at Delhi and in first week of December, 2008 at Kanpur, which consumed six months time. It is further stated that till date i.e., till 5th October, 2009, he was not in a position to walk properly. The learned counsel enquired the position of case and found that the same was not listed due to the defects raised by the registry. Thus thereafter the same was collected and refilled on 9th October, 2009 after curing the defects. On refiling on 9th October, 2009, the Registry again raised certain objections which are not relevant for us because the matter was listed before the Court on 13th October, 2009 along with office objections on the request of learned counsel for the appellants.

4. The Hon'ble Supreme Court in *Union of India v. Popular Construction Company, 2001 (8) SCC 470* held that Section 5 of the Limitation Act, 1963 has no application to proceedings under Section 34 of the A&C Act for setting aside an Arbitral Award. The words "but not thereafter" used in proviso to Sec. 34(3) were held to be amounting to an express exclusion in terms of Section 29(2) of the Limitation Act and would, therefore, bar the application of Section 5. The history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an award is absolute and

inextensible by Court under Section 5 of the Limitation Act. The A&C Act is a departure from the Arbitration Act, 1940 and any Award therein becomes immediately enforceable upon expiry of the limitation period under Section 34.

5. In *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Ors*, (2008) 7 SCC 169, it was reiterated that Section 5 of the Limitation Act has no application to Section 34 of the A&C Act, though, however, Section 43 of the A&C Act makes provision of the Limitation Act 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceedings referred to under Section 43 are the original proceedings which can be equated with a suit in a Court. Hence Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the Court. For the said reasoning, it was held that there was no provision of the A&C Act which excludes applicability of Section 14 of the Limitation Act to an application submitted under Section 34 of the A&C Act.

6. Dealing with the issue of delay in refiling, in *Indian Statistical Institute vs. Associate Builders AIR 1978 SC 335* it was laid down that if the initial institution is within time, Section 5 of the Limitation Act has no application. The delay in representing/refiling is not subject to

rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act.

7. The Delhi High Court Rules relating to the original side came into force in 1967 and Rule 2 of Chapter IV of the Original Side Rules reads:

2. Endorsement and scrutiny of documents –

(a) The officer in charge of the filing counter shall endorse the date of receipt on the plaint, petition, application or proceedings and also on the duplicate copy of the index and return the same to the party. He shall enter the particulars of all such documents in the register of daily filing and thereafter cause it to be sent to the office concerned for examination. If on scrutiny, the document is found to be defective, such document shall, after notice to the party filing the same, be placed before the Registrar. The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary.

(a) Where the party fails to take any steps for removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the document.

(c) Any party aggrieved by any order made by the Registrar under this rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.”

8. The Delhi High Court Rules framed in exercise of power conferred under Sections 122 and 129 of the Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1967, were amended w.e.f. 1st December, 1988 and Rule 5 in Chapter 1-A (a) of Volume 5 was substituted to read as under:-

“Rule 5(1) The Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

Rule 5(2) If the memorandum of appeal is not taken back, for amendment within the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

Rule 5(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Explanation: The period of seven days or thirty days mentioned above shall commence from the date, the objections are put on the notice board.

Note: The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether Civil or Criminal.

9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in re-filing are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can

be permitted an indefinite and unexplainable period for refilling the petition.

10. In *Gautam Associates vs. Food Corporation of India* MANU/DE/1750/2009 this court took the view and held:

“30. On a perusal of the aforesaid rules, immediately the distinction between the rules for re-filing on Original Side and in other jurisdictions comes to the fore. While upon delay in re-filing/representation on the Original Side, the Registrar is to decline registration of the document if on the date of such re-presentation it is found to be barred by time, in other jurisdictions such institution is to be merely treated as fresh institution. The reason appears to be that while Section 5 of Limitation Act, is not applicable to suits, as also to OMPs under Section 34, it is, with respect to other jurisdictions.”

11. In *UOI v. Harbhagwan Harbhajan Lal & Arun Constructions Co. FAO (OS) No. 259/2010* we have already affirmed the decision rendered in *Gautam Associates (Supra)*. Applying the principles laid down we find that when the first filing was done it was a proper filing in as much that the only objection raised by the Registry on 2nd September, 2008 was for obtaining the caveat clearance. The delay was thereafter in first obtaining the caveat clearance and then in filing an application for condonation of delay in refilling.

12. The Courts are liberal in condoning delay specially in re-filing as the rigors of Section 5 of the Limitation Act do not apply to representation/refiling and surgery of the husband of the counsel would though be a sufficient cause, but the same would not permit the party

condonation of an inordinate, unexplained delay. The affidavit is silent as regards the period beyond the six months required for the surgeries.

13. Accordingly, the appeals are dismissed.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

November 12, 2010
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