

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.665/2009 & CM No.18944/2009

The Executive Engineer
(Irrigation & Flood Control)

....Appellant through
Ms. Aruna Tikku & Ms. Ruby
Nahar, Advs.

versus

Shree Ram Construction Co.

....Respondent through
Mr. G.K. Sharma, Adv.

WITH

FAO(OS) No.444/2009 & CM No.13776/2009

Power Grid Corpn. of India Ltd.

.....Appellant through
Mr.A.T.M. Rangaramanujam,
Sr. Adv. with Mr. Pawan
Upadhyay, Adv.

versus

BWL Limited

.....Respondent through
Ms. Tanya Khare, Adv.

WITH

FAO(OS) No.132/2009 & CM No.5212/2009

Union of India

.....Appellant through
Mr.Parag P. Tripathi, ASG
with Ms. Arti Gupta &
Ms. Prem Lata Bansal, Advs.

versus

Ogilvy & Mather Ltd.

.....Respondent through
Mr. Vinod Bhagat with
Mr. Amiet Andley, Advs.

WITH

FAO(OS) No.259/2010 & CM No.7202/2010

Union of India

.....Appellant through
Mr. Anshuman Sinha, Adv.

versus

Harbhagwan Harbhajan Lal &
Arun Construction Co.

.....Respondent through
Mr. A.K. Singla, Sr. Adv. with
Mr. J.K.Sharma, Adv.

WITH

FAO(OS) No.49/2009 & CM Nos.11595/09 & 5016/10

Saibaba CGHS Ltd.

.....Appellant through
Mr. S.S. Mishra, Adv.

versus

Vishnu Promoters Pvt. Ltd.

.....Respondent through
Ms. Rashmi Jain & Mohd.
Amanullah, Adv.

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Date of Decision : November 12, 2010

CORAM:

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HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether reporters of local papers may be
allowed to see the Judgment?

Yes

2. To be referred to the Reporter or not?

Yes

3. Whether the Judgment should be reported
in the Digest?

Yes

VIKRAMAJIT SEN, J.

1. This Appeal assails the Order dated 5.9.2007 wherein the learned Single Judge has taken the view that the filing of the Objections under Section 34 of the A&C Act in the Court of the

District Judge, Delhi was not carried out in good faith; and that the refiling in the Court possessing jurisdiction, that is, the High Court of Delhi was carried out after 45 days of its return disclosed lack of diligence. The learned Single Judge held that even assuming that the period of one year and seven months could be excluded for filing (refiling) while computing the period of limitation, by availing Section 14 of the Limitation Act, 1963, the Objections were nevertheless time barred.

2. The facts of the case are that the subject arbitral Award was published on 10.11.2004 and was received by the Appellant on 17.11.2004. The period of three months set-down in Section 34(3) of the A&C Act commenced running from 17.11.2004 and in its ordinary course culminated on 15.2.2005. The Objections were filed in the Court of District Judge, Delhi on 25.1.2005, that is, leaving unutilized/unavailed twenty two days in the permissible period. The Respondent filed an application in the Court of the Additional District Judge, Delhi to whom the *lis* was assigned, predicated on Section 42 of the A&C Act, praying that the Objections should not be entertained as Court of District Judge did not possess jurisdiction for their adjudication. Indubitably, since the appointment of the Arbitrator had been made by this Court, "all subsequent applications arising out of that agreement and the arbitral proceedings" would have to be

filed in the High Court of Delhi. The Appellant did not contest this position and asked for the withdrawal of the Objections on 14.8.2006. It has been clarified that the Objections were filed in the Court of District Judge because the Award had granted ₹ 5,37,160/- and the pecuniary jurisdiction of the High Court of Delhi is from ₹ 20,00,001/- and upwards. It is also not in dispute that the Objections alongwith the entire records were returned by the Additional District Judge, Delhi to the Appellant on 25.8.2006 and were filed/refiled in this High Court on 10.10.2006. Mr. G.K. Sharma, learned counsel for the Respondent, however, submits that when the filing/refiling was carried out by the Petitioner in this Court on 10.10.2006, the Objections already stood time barred.

3. We had occasion to consider this interesting question of law in *Bharat Sanchar Nigam Limited -vs- Haryana Telecom Limited*, 2010 VII AD (Delhi) 331. We think it necessary to reproduce the relevant paragraphs of the said Judgment:

11. We have expressed the opinion, hereinabove, that since the Arbitral Award was not delivered by the Arbitral Tribunal [as envisaged in Section 31(5) of the A&C Act] to the party, the period for filing of Objections must be held not to have commenced. Would this view remain steadfast even in circumstances where Objections have actually been filed by the concerned party *albeit* in the wrong Court.

This is the legal nodus which remains to be answered. It is axiomatic jurisprudence that there is no estoppel against the statute. In this case, however, this principle would not apply for the reason that the party concerned, upon having filed Objections, has exercised a right vested and bestowed upon it by virtue of a statute. Moreover, law unhesitatingly and unquestionably acts on admissions made by a litigating party. In this case the Appellant has itself stated that copies of the Award were received by it (from the Respondent/Decree Holder) on 6.11.2000, and thus, we find good reason to take this date as the commencement of the period of limitation. On principles analogous to Section 14 of the Limitation Act, 1963, the period expended in a Court not possessing jurisdiction would have to be excluded. Exclusion of time is an exercise totally distinct from condoning the delay in filing an action. On the rejection or return of the Plaint/Objections, the period for refiling cannot be left open-ended. High Courts have taken the position that the Court rejecting the plaint/petition is not possessed with powers to fix a date within which the action must be filed in another Court. By the introduction of Section 10(a) in Order VII, by Act 104 of 1976, this position has been changed and the vacuum has been filled. It is now open to the Plaintiff/Petitioner to move an application in the First Court, thereby specifying the Court in which he proposes to present the plaint or refile the action after its return, and pray that the First Court may fix a date for the appearance of the parties. If the First Court

passes such orders, Sub-rule(4) clarifies that in this event the transferee Court would not be required to once again issue notice to the Defendant/Respondent.

12. It is trite that the Plaintiff/Petitioner may consider it expedient or prudent to challenge the return or rejection order before the Appellate forum; or it may decide to abide and comply with the Order. In the first case, the time spent before the Appellate Court may also have to be excluded. In the latter case, the question that arises is how much time should be reasonably allowed to the Plaintiff/Petitioner to file the rejected Plaint in the Court which it considers rightly possesses territorial jurisdiction. It seems incongruent to us that if the Petitioner stands restricted to an initial period of 90+30 days, a larger period can be allowed for the purpose of such refiling. So far as this is concerned, we are in virgin legal territory as no statutory provision appears to have been prescribed by any legislation. We would, in these circumstances, hold that the refiling must be carried out within the total span of 90 days, leaving the Court with the discretion to condone any delay restricted to a further period of 30 days provided sufficient cause has been disclosed. The date of rejection in Ambala Court was 16.5.2001; in Chandigarh on 19.11.2001 and in the High Court of Himachal Pradesh on 16.7.2001. As already noted above, the Objections were initiated in this Court in OMP No.215/2001 on 31.8.2001 and in OMP No.17/2002 on 3.1.2002 respectively.

13. Mr. Sharma, learned counsel for the Respondent/Decree Holder, has contended that since

the Objections were rejected under Order VII Rule 11 of the CPC in the Ambala Court, the relief permitted by Section 14 of the Limitation Act would not be available. After the filing of the Objections in this Court, the Appellant avowedly preferred a Review before the Ambala Court praying that the Objections ought to have been returned under Order VII Rule 10 and not rejected under Order VII Rule 11 of the CPC. Where a Court arrives at a conclusion that it does not possess jurisdiction, it should not proceed further and should only pass orders which would consequentially ensue; in most cases for the rejection of the plaint/petition/Objection or with the dismissal thereof, with liberty for filing them in a competent court in accordance with law. The Review was dismissed on the ground that it had been preferred beyond the period of limitation; secondly that the High Court of Delhi was already seized of the Objections and no prejudice was shown to have been caused. Therefore, the Review was not dismissed on merits. This being the situation, we think that there is no alternative but to treat the action of the Ambala Court as one standing and predicated on Order VII Rule 11 of the CPC, thereby rejecting the Objections and not dismissing them.

4. Ms. Aruna Tikku, learned counsel for the Appellant, has argued that since the filing of the Objections in the Court of District Judge was carried out within the statutory period of three months, the provisions of Section 34(3) of the A&C Act,

which vests power in the Court to condone a delay of thirty days beyond the initial three months period, do not come into play. It is her argument that since the Objections had been filed in Court within the period allowed in the statute, the refiling would have to be carried out within a reasonable period. She submits that the Additional District Judge, Delhi was duty-bound to prescribe the period within which the Objections could be filed in the competent Court and having failed to do so, this Court should only consider whether the filing/refiling was effected within reasonable time. It is her contention that since the Objections were returned by the Orders of the learned Additional District Judge, Delhi on 25.8.2006 and were refiled within forty-five days, on 10.10.2006, it would not be justifiable to take the view that an inordinate or unreasonable time had been taken for the refiling of Objections in this Court. Therefore, without alluding to Section 34(3) of the A&C Act, she submits that there is no delay in preferring the Appeal before the High Court of Delhi.

5. The Appeal is strongly opposed by learned counsel for the Respondent. Firstly, it is contended by Mr. G.K. Sharma, learned counsel for the Respondent, that the action of filing of Objections in the Court of the District Judge, Delhi was not *bonafide* and, therefore, the provisions of Section 14 of the

Limitation Act cannot be resorted to. Secondly, the filing of the Objections in this Court do not attract Order VII Rule 10A of the Code of Civil Procedure, 1908 (CPC for short) as neither of the two Courts can be viewed as transferor or transferee courts. In this regard reliance has been placed on ***Harshad Chimanlal Modi -vs- DLF Universal Limited***, 2006(1) SCC 364. No doubt, the Court held that presentation of a plaint in the correct Court after its return is not a case of 'transfer' but those observations were made in a totally different context. The argument was that the proceedings in the transferee Court should continue from the very stage it was at when the transfer was ordered. It was in these circumstances that the Hon'ble Supreme Court clarified that where a Court lacks jurisdiction to an extent that the litigation requires to be transferred, none of the actions taken by it would have the status necessitating the Court properly possessing jurisdiction to take up proceedings from the stage they stood in the wrong Court. This is no wise the case before us and, therefore, ***Harshad*** is not relevant. It is further contended by Mr. Sharma that the initial filing in the Court of the District Judge, Delhi must be treated as *non est* with the result that when the Petition came to be preferred in this Court on 10.10.2006, it constituted the first filing and it was clearly barred by time. Reliance is sought to be placed by Mr. Sharma

on ***Vishnu Horticultural Pvt. Ltd. -vs- Shampiyani Viniyard Ltd.***, 2010(2) CCC 128 (Bombay). We are of the view, however, that this case is also not of relevance. It is true that there are observations to the effect that a *lis* will always be treated as having been filed afresh, thereby making it subject to limitation, pecuniary jurisdiction and payment of Court Fee etc., as opined in *Hanamanthappa -vs- Chandrashekharappa*, AIR 1997 SC 1307. In ***Vishnu***, the learned Single Judge of the Bombay High Court has applied ***Harshad***. We think that the observations alluding to pecuniary jurisdiction and payment of Court Fee have not been relied upon contextually. In both these cases different High Courts or State Courts have prescribed varying stipulations. Let us take the instance of a matter being filed in the Delhi High Court. If it is found that Delhi has no territorial jurisdiction and Uttar Pradesh does, it cannot be contended that the Court Fee already paid would be proper in that State and/or that the case must be heard in the High Court of Uttar Pradesh.

6. Order VII Rule 10A of the CPC now ordains that if the initial Court is of the opinion that the plaint/objections/petition should be returned, the Court shall, before doing so, intimate its decision to the plaintiff. This is for the reason that the second sub-section obliges the Court, no doubt on the application of the plaintiff, to specify and indicate the Court in which the plaintiff

proposes to present the plaint. Order VII Rule 10A(2) further states that the Plaintiff can make an application to the Court requesting it to specify the Court in which the returned Plaint is to be filed, the date on which the parties are to appear before the said Court and that the notice of the date filed to be given to him and the Defendant. Sub-section(3) of Order VII Rule 10A thereafter mandates that these actions should be taken by the Court on an application being made by the Plaintiff. Sub-section(4) of Order VII Rule 10A removes the rigour of having to serve the Defendant/Respondent once again for the simple reason that the latter is put to notice of the transferee Court as well as the next date of hearing. All these provisions, it appears to us, are salutary in nature and have the avowed purpose of protecting the interests of all the parties to the *lis*.

7. The last and fifth sub-section of Order VII Rule 10A should not be lost sight of. It clarifies the position that where a Court is of the opinion that it does not possess jurisdiction, pecuniary or otherwise, it is duty-bound to return the plaint or petition or objection, as the case may be, after giving due prior notice of its decision to the Plaintiff. The Plaintiff may or may not agree with this decision. If, as a consequence of the prior intimation by the Court of its *prima facie* view, the Plaintiff is of the opinion that the return of the plaint is in consonance with law, and an

application under sub-section(2) is moved, then an appeal stands disallowed under sub-section (5) of Order VII Rule 10A of the CPC. The Plaintiff may not agree that the Court in which he had initiated the *lis* is devoid of jurisdiction and hence he has the right to challenge an Order returning a plaint. It is for this simple reason that he has been allowed the option to file applications under Order VII Rule 10A(2) of the CPC.

8. In the event, the Appellant did not file an application under Order VII Rule 10A(2) of the CPC and, therefore, the next date of hearing in this Court was not fixed by the Additional District Judge, Delhi before whom the Objections were initially filed. However, the Appellant obviously accepted the Order since it was not assailed by him in Appeal. The nodus which arises relates to the manner in which the period of limitation is to be computed. We may reiterate that Section 14 of the Limitation Act provides an exclusion and not extension of time. If the provisions are advantageously available to the Plaintiff/Petitioner/ Objectitioner, the time expended *bonafide* in the Court which was not possessed of jurisdiction would have to be excluded, which, in the present case, is one year and seven months. The manner of calculation is akin to that of computing the period of limitation so far as applying for and obtaining a certified copy of the Order sought to be impugned. If, for

example, if a period of three months is prescribed for filing an appeal and the certified copy is applied for fifteen days later, and is made available after fifteen days thereof, the period of limitation would expire after 90+15 days. The rationale may be different but the result is the same. So far as the certified copy is concerned, the Appellant would be deemed to be capable of taking requisite action only on the perusal of the certified copy.

9. We are unable to accept the submission of learned counsel for the Appellant that the very factum of having filed Objections within three months would render other provisions of the A&C Act superfluous and irrelevant. This argument would defeat the purpose of the A&C Act which is for the expeditious conclusion of the arbitration proceedings. It is a tenet of our jurisprudence that procedure is merely a handmaid of the law. Procedure cannot defeat the purpose of the law. On the other hand, it will be available to alleviate an apparent miscarriage of justice because of a pedantic or punctilious reading of the law. Order VII Rule 10A of the CPC provides for harmonizing hardship. Without it, the taking of an ill advised but *bonafide* action would result in the remedy being rendered nugatory. Rule 10A of Order VII of the CPC steps in by permitting the plaint/petition/objection filed in a Court not possessing jurisdiction to be returned for filing in a Court actually

possessed of jurisdiction. This empowerment is bestowed by Rule 10. These provisions do not recognize or articulate the fiction that the filing of the action in the initial Court shall be deemed to be a filing in the Court contemplated under Rule 10A. Despite this lacuna, that this is what occurs is obvious from Rule 11 to 13 of Order VII of the CPC which deal with the case of the rejection of the plaint.

10. In ***Haryana Telecom***, we had expressed the opinion that the filing of the Objections in the Court possessing jurisdiction cannot possibly extend to a period beyond what has been prescribed by the statute. We think that this statement needs to be further amplified. The period for refiling cannot be left open-ended, with the only requirement being that the refiling or fresh filing should be carried out within a reasonable time, as if the Court has not specified any period while deciding an application under Order VII Rule 10A of the CPC. We reiterate that the period spent *bonafide* in the Court not possessing jurisdiction has to be excluded. In the case before us, it is exactly one year and seven months. The effect will be that this period would have to be added to the prescribed period of three months together with the discretionary thirty days. Since the period of limitation in the case in hand would ordinarily have expired on 15.2.2007, a period of one year and seven months (that is 25.1.2005 to

25.8.2006) would have to be added, thus bringing it to 15.9.2008. Since 68 days had been exhausted in the initial filing, if the Objections had been filed in this Court within the remainder of 22 days, no delay would have been occasioned, bringing us to 9.9.2006. The Objections, in the case in hand, however, were filed in this Court only on 10.10.2006, that is, beyond the period of three months after allowing exclusion of one year and seven months as prescribed by Section 34 of the A&C Act.

11. Learned counsel for the Respondent has vociferously and repeatedly reminded us that no application has been filed by the Appellant under Section 34(3) of the A&C Act. This provision, we think, ought to be reproduced for a comprehensive analysis of the law:-

Section 34 : Application for setting aside arbitral award

....

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three

months it may entertain the application within a further period of thirty days, but not thereafter.

In contradistinction to the opening words of sub-section(3), the proviso does not postulate the filing of an application. It only contemplates the Court's satisfaction that the Applicant/Objector was prevented by sufficient cause from making the application/Objections within the said period of three months. We do not find ourselves constrained in any manner whatsoever from doing complete justice because of the absence of an application seeking condonation of delay if we are otherwise satisfied that sufficient cause exists. While doing so, we are fully mindful of the fact that we are not expanding the scope of the main provision. We say this despite the fact that learned counsel for the Appellant had argued that Section 34(3) of the A&C Act has no application to the present case for the reason that the initial filing had been carried out within the prescribed period of three months, *albeit* in the wrong Court. It also appears to us that where a remedy of an appeal has been provided for, the interpretation of the provision for computation of the period should be carried out liberally so that the remedy is not rendered illusory (See *State of Bihar -vs- Kameshwar Prasad Singh*, (2000) 9 SCC 94, *Bhag Mal -vs- Munshi*, (2007) 11 SCC 285 and *Sandhya Rani Sarkar -vs- Sudha Rani Debi*,

(1978) 2 SCC 116. This is why the Hon'ble Supreme Court has, time and again, condoned the delay in filing appeals sometimes even beyond a period of a year.

12. This brings us to the question of whether the case for the exclusion of time envisaged in Section 14 of the Limitation Act has been made out by the Appellant. The test is that the Plaintiff should have been prosecuting the proceedings all through out with due diligence. This perforce will cover the initial filing as well as the manner in which the action was prosecuted in that Court. It is no longer *res integra* that Section 14 of the Limitation Act applies to the A&C Act as it has explicitly been held so in State of *Goa -vs- Western Builders*, (2006) 6 SCC 239. Their Lordships, *inter alia*, opined that the "general proposition is by virtue of Section 43 of the Act of 1996 the Limitation Act, 1963 applies to the Act of 1996 but by virtue of sub-section(2) of Section 29 of the Limitation Act, if any other period has been prescribed under the special enactment for moving the application or otherwise then that period of limitation will govern the proceedings under that Act, and not the provisions of the Limitation Act. In the present case under the Act of 1996 for setting aside the award on any of the grounds mentioned in sub-section(2) of Section 34 the period of limitation has been prescribed and that will govern. Likewise,

the period of condonation of delay i.e. 30 days in the proviso". Their Lordships referred to *Union of India -vs- Popular Construction Company*, 2001(8) SCC 470 which case relentlessly emphasizes the words "but not thereafter" contained in Section 34(3) of the A&C Act, thereby clarifying that the provisions of Section 5 of the Limitation Act do not apply to the A&C Act.

13. This also demolishes the argument of learned counsel for the Appellant that the Court is required to inquire only as to the reasonableness of the period which has been taken by the Plaintiff in presenting the returned Plaint/Petition/Objection to the Court possessing jurisdiction.

14. The decision in *Amar Chand -vs- Union of India*, AIR 1973 SC 313 immediately comes to mind. This is for the reason that their Lordships had enunciated that the filing of an action in a wrong Court would, for all intents and purposes, including the Limitation Act, be *non est* and secondly that the presentation of the action in another Court would not be construed as its continuation. **Harshad**, in fact, takes support of this precedence and, therefore, we quote the relevant paragraph thereof:-

8. It was contended for the appellant that even if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff was entitled to the benefit of Section 4 of the Act. Section 4 of the Act

provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the court reopens. But, if the Karnal Court was not the proper court in which the suit should have been filed, the plaintiff would not be entitled to the benefit of Section 4. The decision of the Privy Council in *Maqbul Ahmad v. Pratap Narain Singh*, AIR 1935 PC 85 is an authority for this proposition. In that case the Privy Council said:

...the language of Section 4 is such that it seems to Their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the court is closed, the application may be made on the day when the Court reopens. In Their Lordship's view that means the proper Court in which the application ought to have been made....

If the plaintiff had filed the suit in the trial court, on March 2, 1950, then certainly the suit would have been within time under Section 4, as that was the proper Court in which the suit should have been filed. As the Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the Provisions of Section 14 of the Act would not, in any way, affect the question whether the suit was filed within the time as provided in Section 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the

same cause of action 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. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time as the filing of the suit in the Karnal Court was beyond the period of Limitation. It was, however, argued by Counsel for the appellant that the suit instituted in the trial court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial court; We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Harachand Succaram Gandhi v. G.I.P. Rly. Co.*, AIR 1928 Bom 421, *Bimla Prasad Mukerji v. Lal Moni Dev*, AIR 1926 Cal. 355, and *Ram Kishun v. Ashirbad*, AIR 1950 Pat 478. Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial court.

15. The ratio of ***Western Builders*** has been upheld in ***Consolidated Engineering Enterprises -vs- Principal Secretary, Irrigation Department***, (2008) 7 SCC 169. The Three-Judge Bench reiterated that Section 14 of the Limitation Act has the effect of bestowing the benefit of exclusion of time, restricted however to the period prescribed, that is, three months and thirty days only. Beyond this period, even if sufficient cause is shown the Court is powerless to condone the delay. Their Lordships opined that the *Commissioner of Sales Tax, U.P., Lucknow -vs- M/s. Parson Tools and Plants, Kanpur*, (1975) 4 SCC 22 had not declared that Section 14 of the Limitation Act is not available with regard to the A&C Act. These passages from ***Consolidated Engineering*** are instructive:-

23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award

whereas the proceeding 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. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long.

Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

.....

53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension

cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

16. To clarify the position, so far as the present case is concerned, had the refiling been carried out in this Court after three months plus thirty days plus one year and seven months, then a jural consideration of 'sufficient cause' would have become irrelevant altogether. The Award was served on the Objector on 17.11.2004. The time would ordinarily have expired on 17.3.2005; discretion to condone further delay would have been obliterated. After a further period of one year and seven months, that is, 17.10.2006, limitation would have irretrievably

and irremediably run out. Fortunately, for the Plaintiff the filing of Objections in this Court was carried out on 10.10.2006, ergo, within the condonable period. We have found it fortunate since we are mindful of the fact that this position has not been argued by learned counsel for the Appellant.

17. What now remains to be considered is whether the Appellant has been prevented by sufficient cause from filing Objection/Application within the period of aforementioned three months and the discretionary thirty days. The explanation given by learned counsel for the Appellant is that since the arbitral Award was for a sum of ₹ 5,37,160/-, it was filed in the Court of the District Judge, Delhi which normally possesses pecuniary jurisdiction even disputes above ₹ 5,00,000/-. It was only when the Respondent highlighted that the operation of Section 42 of the A&C Act that it was allegedly realized by the Appellant that the filing should have been done in the High Court of Delhi, regardless and irrespective of the fact that the value of the Award was much below the ordinary pecuniary jurisdiction of the High Court of Delhi. While we appreciate the consequences of Section 42 of the A&C Act, it should not be overlooked that it could well be seen as restricting provisions of Section 20 of the CPC. Section 42 of the A&C Act is salutary since it restricts jurisdiction to the Court whose portals have been initially

visited. But a mistake on this count would not manifest recklessness or lack of diligence. Even where the initial filing in the Court not possessing jurisdiction may have been *bonafide*, the prosecution of the case thereafter may have been negligent leading to the dismissal for non-prosecution or for non-appearance. In the latter cases, therefore, time would not be excludable under Section 14 of the Limitation Act. Therefore, the twin tests have to be complied with and we are satisfied on this score. In the facts of the case, therefore, we are unable to agree with the conclusion of the learned Single Judge that the delay on the part of the Appellant was not *bonafide*.

18. The Appeal is accordingly allowed. CM No.18944/2009 stands disposed of. The Objections/Application under Section 34 of the A&C Act are restored to the Board of the learned Single Judge for decision in accordance with law.

19. Parties to appear before the learned Single Judge on 14.12.2010.

FAO(OS) No.444/2009 & CM No.13776/2009

20. At the threshold, it should be noted that in the impugned Order dated 15.9.2009, the learned Single Judge had issued Warrants of Attachment with respect to the Appellant's Bank Accounts with the State Bank of India, Jawahar Lal Nehru University, New Delhi and State Bank of India, Gandhi Nagar,

Jammu for a total sum of ₹ 83,75,576/-. The learned Single had clarified that if the amounts in one Account are sufficient, then the other Account shall not stand attached. What is significant is that on the submission of Mr. Rangaramanujam, learned Senior Counsel for the Judgment Debtor/Appellant, the Warrants were deferred for a period of two weeks to enable voluntary payment by the Appellant. Instead of complying with the tenor and purpose of the indulgence given by the learned Single Judge, the present Appeal has been filed.

21. While perusing the impugned Order, we have come across a multitude of errors in the reproduction/typing. This led us to locate the Certified Copy of the Order on the record. On the first date of hearing, the Plaintiff's application from filing the Certified Copy of the impugned Order had been allowed, subject to all just exceptions. This was in view of the assertion of the Appellant in the Application that it had applied for a Certified Copy of the impugned Order. Till date, the impugned Order is not on record. It has been held in a catena of cases that in the absence of the filing of the Certified Copy the Appeal is not maintainable. The position may be appreciably different if the Certified Copy had not been made available to the Appellant till today. Our inquiry with the Registry discloses that the Certified Copy was delivered to the Appellant on 20.10.2009. It is

repeatedly argued that in respect of the government as well as public sector undertakings (PSUs), that the normal law of limitation should not be applied. However, the indulgence and latitude extended by Courts to such entities has resulted in their disdainfully ignoring the obligations cast upon them vis-à-vis the period set down in the Limitation Act, 1963. Obviously, this has led to the altering the view of their Lordships, as is evident from a reading of *State of West Bengal -vs- Administrator, Howrah Municipality*, (1972) 1 SCC 366 : AIR 1972 SC 749, *State of Rajasthan -vs- Nav Bharat Construction Company*, (2005) 11 SCC 197 : AIR 2005 SC 2795 and *State of Karnataka -vs- Y. Moideen Kunhi*, (2009) 13 SCC 192. Very recently, in *Oriental Aroma Chemical Industries Ltd. -vs- Gujarat Industrial Development Corporation*, (2010) 5 SCC 459 their Lordships have emphasized that whilst a liberal approach may be justified where a short period has to be condoned, a stricter approach is called for where delay is of an inordinately long duration.

22. The Appeal is accordingly dismissed as being barred by limitation.

23. Nevertheless, we shall also consider the merits and substance of the arguments addressed before us by learned Senior Counsel for the Appellant. We must straightway set down the factual matrix. The Award was published on 14.3.2006. The

Objections have undisputedly been filed on 3.7.2006. The High Court Notification for the relevant period stated that the period between 5.6.2006 and 30.6.2006 would not be taken into reckoning for the purposes of limitation. Accordingly, the Objections to the Award having not been filed on the reopening day, the Appellants are not entitled to deduct the vacation period. This was the contention of the Respondent before the learned Additional District Judge, Delhi. However, since a period of thirty days is permitted by proviso to Section 34(3) of the Arbitration & Conciliation Act, 1996 (A&C Act for short), even though not specifically invoked before us, we desist from dismissing the Appeal on this ground. The Objections were filed after 109 days. What requires underscoring is that only 11 days remained from the maximum period, that is, three months plus thirty days.

24. Assuming that the Objections were initially filed within the period provided and permitted in law, it is contended before us that the subsequent delay in refiling the Objections after removal of the objections recorded by the Registry would not fall within the ambit of Section 34(3) of the A&C Act. The Objections have been re-filed in this Court on 26.8.2009, and not 19.8.2009, as has been incorrectly contended before us by learned Senior Counsel for the Appellant. Details pertaining to

the pendency of the Objections in the Court of the District Judge, Delhi are not forthcoming. On a reading of the Application under Section 5 of the Limitation Act filed before the learned Single Judge, it appears that the learned Additional District Judge, Delhi had, vide Order dated 21.1.2008, dismissed/returned the Objections on the ground of lack of pecuniary jurisdiction as the Award was in excess of ₹ 20,00,000/-. Anyone dealing in legal matters, whether a practicing lawyer or an officer of the Legal Department of a company as large as the Appellant, would be deemed to know that such an Award is ordinarily challengeable in the High Court of Delhi. We are constrained to make these observations for the reason that whenever and whatever latitude and indulgence has been extended, it has only been misused with sheer negligence. The Additional District Judge, Delhi, in his Order dated 21.1.2008, granted an opportunity to the Appellant to collect original documents, if any, after furnishing certified copies thereof. This was to enable the Objections/Petition to be presented before the Court of competent jurisdiction, which in this case is the High Court of Delhi. However, even though the certified copies were available on 7.2.2008, the refilling/filing was carried out as late as on 26.8.2009 that is, after approximately eighteen months.

25. The Application under Section 5 of the Limitation Act sets out, in the context of the plea for condonation of delay, as follows:-

.....

3. That in its reply, the respondent raised an issue regarding the jurisdiction of the Court of Ld. Additional District Judge in entertaining the said objection petition preferred by the petitioner. On the basis of the said objections, the Ld. Trial Court framed a preliminary issue on the jurisdiction of the Court of Additional District Judge in entertaining and adjudicating upon the present case.

4. That the said issue remained pending adjudication before the Ld. Trial Court till January 2008 and vide order dtd. 21.01.2008, the Court of Ld. Additional District Judge, rejected the objections filed by the petitioner with a liberty to present the same before the Court of Competent Jurisdiction. The last part of the order dtd.21.1.2008, read inter alia, "However, the petitioner is given liberty to collect the original documents if any after furnishing the certified copies so that the petition may be presented before the Court of Competent Jurisdiction".

5. That the said matter was being looked after by Sh. C. Mitra, AGM, Northern Region Headquarter, Jammu, who in between got retired and his duties were assigned to one Mr. Manoj Kumar. Mr. Manoj Kumar also left the job and joined some multi-national corporation and left India.

6. *That the aforesaid order of the Ld. Trial Court would not be brought to the notice of the petitioner, either by the counsel or by any person, consequently the necessary steps regarding re-filing of the case before a competent court not be initiated.*

7. *That the respondent preferred an execution petition before this Hon'ble Court which was registered as Execution Case No.366/08 and a notice was issued by this Hon'ble Court for appearance.*

8. *That during the course, the petitioner tried to find out as to why this Execution Petition has been filed and this pertains to which matter of the petitioner? During the course of such inquiry it was revealed that the present case which was to be presented before this Hon'ble Court, pursuant to the order of the Ld. ADJ, dtd. 21.01.2008, escaped the attention and could not be field in this Hon'ble Court.*

9. *That accordingly all the papers were collected and inquiries were made from the trial court regarding the original records. Since the courts have transferred many times, therefore, the petitioner could not get the requisite Goshwara number and the necessary application for obtaining the certified copies also could not be made.*

10. *That in the circumstances the present petition is being preferred on the basis of the photocopies of the documents which are available.*

11. *That in the course such delay was caused in re-filing the case before this Hon'ble Court.*

12. That the said delay is neither intentional nor deliberate, but has happened on account of the circumstances beyond the control of the petitioner.

13. That the petitioner has a prima facie good case and shall suffer irreparable loss and injuries if the delay so caused in re-filing the present case is not condoned.

PRAYER

In the facts and circumstances of the case and in the interest of justice this Hon'ble Court may graciously be pleased to:

(i) condone the 681/1159 days from filing the present case; and

(ii) may pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

It is significant that the Applicant is unable to decide whether the delay is of 681 days or 1159 days. This is the reason for our analysis that the grating of latitude to the Government as well as PSUs has had a deleterious effect on integrity as well as diligence. If these entities are held subservient to the rigorous of law, as all other persons, the constraints of limitation will be adhered to. Especially, in the realm of arbitration, the compulsions of expeditious disposals and the rights of the successful litigant, so far as enjoying the fruits of a decree validly won are concerned, should not be sacrificed for a careless and slothful party.

26. Learned counsel for the Appellant/Applicant seeking condonation of delay also for the period of refiling has predicated its contention on the decision in *Indian Statistical Institute -vs- M/s. Associated Builders*, AIR 1978 SC 335. We must at once emphasise that the Court had to decide the case in the context of the Arbitration Act, 1940, which, unlike the A&C Act, does not specifically state that the delay cannot be condoned beyond thirty days of the expiry of three months from the date on which the concerned party had received a signed copy of the arbitral award. Their Lordships, relying on Section 149 of the Code of Civil Procedure, 1908 (CPC for short), observed that the deficiency in Court Fee could be permitted to be made up at any stage. So far as failing to fix the date of the verification is concerned, the Court found that the objection was not one that should be taken serious note of.

27. Our attention has also been drawn to *S.R. Kulkarni -vs- Birla VXL Limited*, 1998 V AD (Delhi) 634 where the Division Bench was faced with the delay in refiling an application under Order XXXVII of the CPC seeking leave to Defend. On the facts, which were unfolded in that case, our learned Brothers were of the view that the delay could be condoned on payment of costs. It once again bears highlighting that the provisions of Order XXXVII of the CPC are not of the same preemptory nature as

Section 34(3) of the A&C Act. The Division Bench also analysed Rule 5 of Chapter-1 of Volume V of High Court Rules & Orders which ordains that if the refiling is carried out beyond the time permitted by the Registry, it shall be construed as a fresh institution. Rule 5 requires reproduction for ease of reference:-

Rule-5. Amendment – 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 the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(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.

(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.

28. Even in the backdrop of these Rules, our learned Brothers had opined that “delay in refiling is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act”. Reference was

also made to Single Bench decisions in *Smt. Parvati -vs- Anand Parkash*, AIR 1987 Delhi 90 ; *State Bank of India -vs- Amritsar Engineering Works*, 40(1990) DLT 463. *Ashok Kumar Parmar -vs- D.C. Shankhla*, 1995 ILR (1995) II Delhi 60 also considered this conundrum. The learned Single Judge drew out a distinction between defects of such gravity as would negate the character of filing itself on the one hand and objections of the Registry on the other hand that are formal or ancillary in nature.

29. Reliance on the decision in *Improvement Trust, Ludhiana -vs- Ujagar Singh*, (2010) 6 SCC 786 to the effect that “justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold” is of no avail in the backdrop of the A&C Act which decidedly and calculatedly shuts off curial discretion after the expiry of thirty days beyond three months having elapsed from the date on which a copy of the Award had been received by the appealing party. In the context of the A&C Act, it appears to us that liberality in condoning delay in refiling would run counter to the intention of Parliament which has employed plain language to facially prescribe a cut off date beyond which there is no latitude for condonation of delay. And this is for very good reason. Across the Globe, it has been accepted that there is a pressing need to

bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business conflicts arise. We think it wholly impermissible to extend or expand the time for concluding judicial proceedings at the second stage, that is, that of refiling, when this is impermissible at the very initial stage, that is, of filing objections to an award. It will be apposite to immediately recall the dicta of *Union of India -vs- Popular Construction Company*, (2001) 8 SCC 470. We can do no better than reiterate the words therein – “the history and scheme of the 1996 Act supports the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by Court under Section 5 of the Limitation Act”. This very reasoning has also been clarified and followed in *Chief Engineer of BPDP/REO, Ranchi -vs- Scoot Wilson Kirpatrick India (P) Ltd.*, (2006) 13 SCC 622 in these words:-

8. The decision in Union of India -vs- Popular Construction Company, (2001) 8 SCC 470 did not deal with specific issues in this case. In that decision it was held that in respect of “sufficient cause cases” the provisions of Section 34(3) of the Act which are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”). The position was reiterated in State of Goa -vs- Western Builders, (2006)

6 SCC 239 and also in Fairgrowth Investments Ltd. –vs- Custodian, (2004) 11 SCC 472. There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act.

30. As has already been mentioned above, reference to decisions condoning delay in the filing of Objections under the Arbitration Act, 1940 are of very little relevance. *State of A.P. – vs- I. Chandrasekhara Reddy*, (1998) 7 SCC 141 and *G. Ramegowda, Major –vs- Special Land Acquisition Officer, Bangalore*, (1988) 2 SCC 142 are of no avail to the protagonists for condonation of delay. For the very same reasons, the opinion of the Division Bench in *Radhey Shyam Gupta –vs- Kamal Oil & Allied Industries Ltd.*, 2006(88) DRJ 676, where the Court was concerned with the provisions of Order XXII Rule 3 of the CPC, cannot be extrapolated to the mandates of A&C Act.

31. Learned counsel for the Appellant/Applicant has relied on the recommendation for reconsideration of ***Popular Construction*** as contained in *State of Madhya Pradesh –vs- Anshuman Shukla*, (2008) 7 SCC 487. Firstly, learned counsel is unable to state affirmatively whether his Lordship, Chief Justice of India, has constituted a Larger Bench. Secondly, as noted above, the rationale of ***Popular Construction*** has been reaffirmed by a Coordinate Bench in ***Scoot Wilson***. Faced as

we are with the opinion of the two altogether different Benches of the Supreme Court, we have no alternative but to disregard the referral order in ***Anshuman Shukla***. It is more than likely that had both the earlier decisions been disclosed, their Lordships may not have thought it necessary to refer the matter to a larger Bench.

32. Coming back to the facts of the present case, the delay of 1159 days in filing the Objections in the correct Court cannot be condoned under the provisions of A&C Act and the ratio of ***Popular Construction*** is fully binding on us.

33. Appeal along with CM No.13776/2009 is dismissed.

FAO(OS) No.132/2009 & CM No.5212/2009

34. The Appellant assails the Order of the learned Single Judge dated 13.3.2009 dismissing the Objections filed by the Appellant on the ground that insufficient cause has been shown for condoning the delay of 258 days in its preferment.

35. The Award in question was passed on 2.6.2007. The Objections under Section 34 of the A&C Act were initially filed on 9.8.2007, that is, within sixty seven days. The Registry raised three objections on 13.8.2007 – (a) Caveat Report to be obtained (b) Memo of Parties to be filed and (c) Urgent application not signed. After meeting the Registry's noting, the Objections were refiled on 31.8.2007. The Registry, at this stage, required the

filing of an application seeking condonation of delay in the refiling. (It is certainly arguable that this may not have been essential). The Objections were refiled on 10.4.2008 but the Registry now repeated its previous defect, that is, that the Caveat Report had not been obtained and the details of delay in refiling were incorrect. This position continued even in respect of the refiling on 23.5.2008. The fourth refiling took place on 28.5.2008. The reason stated in the application for condonation of delay was the ill health of the Standing Counsel.

36. The application seeking condonation of delay has been opposed by learned counsel for the Respondent predicated on the argument that Section 5 of the Limitation Act, 1963 is inoperative after the expiry of thirty days after the prescribed period of three months; that Section 5 of the Limitation Act, in fact, does not apply at all so far as Section 34 of the A&C Act is concerned. It is further contended that the question of intentional or unintentional delay is rendered irrelevant in the context of Section 34 of the A&C Act because even one day's delay is irretrievably fatal. Therefore, the observations of the Hon'ble Supreme Court recommending a liberal approach for condoning the delay are not contextual.

37. The learned Single Judge applied ***Popular Construction Company*** as well as ***Consolidated Engineering*** in the

impugned Order. The learned Single Judge also applied *Damodaran Pillai -vs- South Indian Bank Ltd.*, (2005) 7 SCC 300 in which their Lordships had to interpret Rule 106(3) of Order XXI of the CPC. This provision prescribes that “an application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant has the knowledge of the order”. It was reiterated that Civil Courts, in the absence of any express power, cannot condone delay by invoking the inherent power; that Section 5 of the Limitation Act is not maintainable while deciding applications under Order XXI Rule 106(3); that hardship or injustice may be a relevant consideration in applying the principle of interpretation of statute, but cannot be a ground for extending the period of limitation. The full import of this Judgment would become apparent on a reading of Section 5 of the Limitation Act itself which states, in circumstances similar to the A&C Act, that Section 5 would not be applicable to motions under Order XXI of the CPC. It would also be relevant to mention that the learned Single Judge had applied *S.R. Kulkarni -vs- Birla VXL Limited*, 1998 V AD (Delhi) 634, which in our analysis, cannot be extrapolated to the A&C Act. The learned Single Judge rightly concluded that the

alleviations contained in the Limitation Act cannot come to the succour of the Objector under Section 34 of the A&C Act after the expiry of three months and thirty days. The learned Single Judge thereafter looked into the question of whether the delay of 258 days in refiling was condonable. In the event, the conclusion was against the Appellant.

38. In our view, the Court should not lose sight of the fact that the Registry records, not infrequently, different notings to motions filed before it at various stages of its scrutiny. Sometimes, as in the case in hand, it overlooks the notings already made only to revive and retrieve them at a later stage, to the consternation of the concerned party. The attention of the learned Single Judge was not drawn to *Ashok Kumar **Parmar** –vs- D.C. Sankhla*, ILR 1995 Delhi 60 where the Court perceived a watershed between defects of a trivial nature in contradistinction to defects of such gravity and import as would transform the filing into a non-filing. The matter was unsuccessfully carried in Appeal to the Division Bench in *D.C.Sankhla –vs- Ashok Kumar Parmar*, 1995 I AD (Delhi) 753. ***Parmar*** has been followed in *DSA Engineers (Bombay) –vs- Housing & Urban Development Corporation (HUDCO)*, 2003(66) DRJ 466 to condone the delay which occurred *inter alia* in converting the motion from one under Section 14 of the

Arbitration Act, 1940 to Section 34 of the A&C Act. We must immediately mention the decision of the very same learned Single Judge in *State Bank of India -vs- Indian Utility Products*, AIR 2001 Del 30. We are unable to agree with the conclusion in that decision, viz. that deficiency in filing Court Fee would place it in the category of non-filing. There is a distinction between deficiency of Court Fee and complete lack of Court Fee. In *Asha Sharma -vs- Sanimiya Vanijiya P. Ltd.*, 162 (2009) DLT 542(DB), the Division Bench, (of which one of us, Vikramajit Sen, J. was a member), had arrived at this very conclusion after applying ***Mannan Lal -vs- Chhotaka Bibi***, 1970(1) SCC 769 as well as *State of UP -vs- Rehmatullah*, AIR 1971 SC 1374 and *P.K. Palanisamy -vs- N. Aruanugham*, (2009) 9 SCC 173. It is crucially important that several other defects, such as Memo of Parties not having been signed, cuttings not having been initialed, certain paragraphs having been left blank and Power of Attorney not having been stamped, as recorded by the Registry, were ignored by the learned Single Judge in that case. With all deference to the learned Single Judge, the ratio in ***Mannan, Maltex Malsters (P) Ltd. -vs- M/s. Allied Engineers***, AIR 1975 Delhi 123 and *Mahashay Ganesh Prasad Ray -vs- Narendra Nath Sen*, AIR 1953 SC 431 should have persuaded him to condone the delay. The abiding and enduring principle is

that substance will prevail over the idle form. A pedantic approach should be abjured.

39. We have already mentioned that the defects pointed out by the Registry were (a) Caveat Report not obtained (b) Memo of Parties be filed and (c) urgent application not signed. None of these objections are of such profundity and gravity as would render the filing of the Objections, which in this case took place within sixty seven days, as a futile exercise. So far as the urgent application is concerned, we must clarify that this is only in respect of the listing of the case and, therefore, should be seen as a non-essential. Our view would remain steadfast despite the contention of learned counsel for the Respondent that the noting was – “entire paper book be properly signed and dated”. It also needs clarification that a motion may be filed bearing only the signature of the concerned Advocate, provided a valid vakalatnama is available therein. If the motion is filed on the signatures of the concerned party, then any irregularity relating to the vakalatnama pales into insignificance. While we are of the opinion that the condonation of delay on a liberal scale has not had the desired effect, procedural provisions should not be read only to defeat the *lis*. Learned counsel for the Respondent underscores that there were five refilings and that the Appellant did not make inquiries for almost six months; and that while the

Senior Standing Counsel may have been unwell, the Vakalatnama had been signed by another panel lawyer who ought to have been diligent.

40. We think it necessary to treat the Objections as having been filed on the initial date, that is, 9.8.2007 and not on the date when the deficiency of Court Fee had been made good or on the several occasions when they were refiled.

41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the refiling of the Objections. Since this delay crosses the frontier of the statutory limit, that is, three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D.Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing

Counsel, namely, Ms Prem Lata Bansal. We have called for the records of OMP No.291/2008 and we find that the Objections have not been signed by Late Shri R.D.Jolly but by Ms Sonia Mathur on 9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D.Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of refileing of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal. CM No.5212/2009 is also dismissed.

FAO(OS) No.259/2010 & CM No.7202/2010

42. We shall now consider the facts of FAO(OS) No.259/2010. The Award, which was impugned before the learned Single Judge, was passed on 7.3.2009. Objections under Section 34 of the A&C Act were filed on 29.5.2009, that is, within the statutory period of three months; of which two months and

twenty two days have been utilized. Several defects were noted by the Registry which are as follows:-

1. Caveat report be obtained at the time of each subsequent filing and proof of service be filed.
2. Petition/applications/annexures/order/power of attorney should be stamped.
3. Petition/applications/power of attorney be signed and dated.
4. Left side margin of 4 c.m. be maintained.
5. Affidavit be filed in support of petition/appeal/application and attested/identified. Parental details/age/complete address be given. Necessary averments be given since the affidavit has been signed in vernacular.
6. Fair typed copy of dim annexures and hand written annexures be filed.
7. Annexures be made true copy of their original.
8. Underline and highlighting be deleted.
9. Annexures be filed on foolscap and one side of paper.
10. Vakalatnama be filed and signed/dated. Advocates must mention their enrolment number in Vakalatnama. Identify the sign of client. Please mention phone number on Vakalatnama.
11. Certified copy of the award be filed or an application seeking exemption be filed.

43. The Objections were refiled on 27.11.2009 but since the Affidavit was still not attested, it was once again returned. The Objections were refiled on 11.1.2010 with an Affidavit attested

on 18.12.2009. The reasons why the refiling was not carried out on 18.12.2009 itself, or immediately thereafter, are not forthcoming.

44. The learned Single Judge has recorded that a delay of 195 days has occurred in the refiling process. Two grounds were urged, namely, that since two hundred pages were required to be retyped a lot of time was taken up. Secondly, it has been argued that certain documents were so dim that they have to be retyped by the concerned Department. In the Rejoinder, the Appellant had raised a third excuse before the Learned Single Judge, namely, that the papers had got mixed up with another matter between the same parties. The Learned Single Judge concluded that with a modicum of diligence the Objections could have been removed within thirty days. So far as the third excuse, that is, the papers having got wrongly tagged with another matter is concerned, the Learned Single Judge has opined that necessary details had not been pleaded and relied on the decision of another Learned Single Judge in ***Gautam Associates -vs- Food Corporation of India***, 2009 111 DRJ 274, the ratio of which he rightly felt was binding on him. We have perused the decision in ***Gautam Associates***, which we respectfully affirm.

45. So far as the nature of the defects recorded by the Registry is concerned, we find that the Objection Petition (OMP No.30/2010) dated 29.05.2009 bears the signatures of Shri Jitender Kumar Singh, who is the Advocate for the Appellant/Northern Railways Department. The Objections are supported by an Affidavit of the Deputy Chief Engineer, Construction, Northern Railways dated 17.5.2009. The Vakalatnama is also dated 17.5.2009. The Registry has failed to record the date on which the alleged deficiency in Court Fee on the Vakalatnama had been made good. Of the several defects raised, the eleventh pertains to the absence of a certified copy of the Award; and significantly this defect had not been recorded at the initial scrutiny. Admittedly, only a photocopy of the Award had been filed. The Registry has required that a Certified Copy, which must be read as a signed copy of the Award, should have accompanied the miscellaneous Petition/Objections. Failure to do so would be fatal and would have the effect of deeming the filing to be a non filing.

46. Keeping the nature of the defects raised by the Registry in perspective, the learned Single Judge has rightly concluded that they could have been removed within thirty days as an outer limit. We find no perversity in his conclusion that no credible

explanation for condoning the delay for the entire period from August to November 2009 has been given.

47. Appeal is dismissed. CM No.7202/2010 is also dismissed.

FAO(OS) 49/2009 & CM Nos.11595/09 & 5016/10

48. The Appellant assails the Order dated 27.01.2009 passed by the learned Single Judge declining to condone the delay of 844 days in filing Objections against the Arbitral Award dated 12.9.2005. The Appellant had initially filed the Objections under Section 34 of the A&C Act on 13.12.2005 but, on his own showing, did not pursue the matter further for the reason that the Respondent had allegedly approached it for the purpose of arriving at an amicable and out-of-Court settlement. The Appellant's case is that he came to learn that Warrants of Attachment had been passed by the Execution Court on 26.11.2007. Even in these circumstances, it appears that on 11.04.2008 it was the Court which sought a Report from the Registry with regard to the Objection Petition whilst the Appellant was in blissful slumber. The Court was informed that in respect of the said Objection Petition, defects had been recorded by the Registry on 13.12.2005 and the Petition came to be returned on the following day. These Objections were refiled on 07.04.2008. The Learned Single Judge has noted that several months had elapsed even after the issuance of Warrants

of Attachment. The Learned Single Judge correctly opined that Objections were required to be filed within three months of the receipt of a signed copy of the Award and that thereafter the Court possessed power to condone delay limited only to thirty days. The matter could have been ended there but nevertheless the learned Single Judge has found that sufficient cause for condoning the delay has not been shown. It is evident that the learned Single Judge was greatly influenced by the fact that several months had elapsed even after the issuance of Warrants of Attachment. We find no perversity in the exercise of discretion.

49. The Appeal is without merit and is dismissed. CM Nos.11595/09 & 5016/10 are also dismissed.

(VIKRAMAJIT SEN)
JUDGE

(MUKTA GUPTA)
JUDGE

November 12, 2010
tp/nt