

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

+ **FAO.No.46/2010 & C.M. 2592/2010**

% *Reserved On: 20.12.2010*
Decided On: 06.01.2011

DELHI STATE CIVIL SUPPLY CORPORATION LTD. Appellant
Through: Mr.Somesh Chandra Jha, Advocate

Versus

M/S BHAGWATI TRANSPORT CO. Respondents
Through: Mr.B.K.Sood, Advocate

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 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 |

: **MOOL CHAND GARG,J.**

1. The short point involved in this matter is as to, "whether the objections filed by the appellant against the award given by the Arbitrator in favour of the respondent were within time inasmuch as, whether, the appellant was entitled to seek condonation of delay under Section 14 of the Limitation Act r/w Section 42 of the Arbitration and Conciliation Act, 1996?".

2. Briefly stating, the facts of this case are that, the award with respect to the dispute which arose between the parties was passed by the Arbitrator on 30.10.2003. The objections were filed by the appellant before this Court even though in an earlier OMP No. 165/2003 filed by the respondent, the appellant had taken an objection that the OMP No. 165/2003 was not maintainable, as when the Court of District Judge was seized of the matter in view of Section 42 of the Arbitration and Conciliation Act, the OMP No. 165/2003 filed by the respondent in the High Court could not have been filed. However, despite having taken that objection, the appellants themselves filed objections before this court by filing an OMP 44/2004 which was disposed off by this Court vide an order dated 11.04.2005 directing that the objections may be

presented before the appropriate Court. Thereafter the appellant filed objections before the LD. Additional District Judge. The learned Additional District Judge dismissed the objections as belated as the objections filed by the appellant on 25.5.2005 were much beyond the period of limitation and the ADJ refused to condone the delay on the ground of good faith and due diligence.

3. It was the case of the appellant that even though they had not filed objections within a period of limitation of 90 days, extended by a further period of 30 days as they were pursuing remedy before the High court, the delay should have been condoned as the remedy was pursued in good faith and with due diligence and in fact they also filed an application for condonation of delay stating all these facts, even though no such application is available on record.

4. Appreciating the contentions made by the appellant, the learned Additional District Judge refused to condone the delay. Referring to the reasons for not condoning the delay, the learned ADJ observed:-

“Even if it is presumed that it is incorporated in the objections, still the basic point remains in terms of Section 14 of Limitation Act where the objector was pursuing the matter in good faith with due diligence. Admittedly to the knowledge of objector the Court which was seize of the matter was court of District Judge which plea he took in the OMP filed by respondent before Hon’ble High Court and to his knowledge objections should have been filed before the Court of Ld. District Judge. Hence, as per judgment of Delhi High Court reported in “15 D.L.T. (1979) 82” objections could not have been said to be pursued the remedy before Hon’ble High Court in good faith with due diligence. As there is no application on record for condonation of delay in filing the objections before this Court, in my considered view even if there is an oral application to this effect, since the remedy before High Court was not being pursued with due diligence and in good faith, objector is not entitled to condonation of delay of the time spent by him before Hon’ble High Court in terms of Section 14 of the Limitation Act. Even objections are barred by time and liable to be dismissed. Moreover, reasons given by Arbitrator are reasonable and Court while deciding this objection petition under Section 34 not sit as the Court of appeal and look into the merits of the reasons of the award given by Arbitrator. Hence, objections are dismissed being barred by time as well as not made on merits.

Decree sheet be prepared and file be consigned to Record Room.”

5. Before this Court again, similar pleas are sought to be addressed by the appellant, however, the respondents have relied upon a judgment of this Court in OMP No. 17/2002 titled as *Union of India & Anr. Vs. Haryana Telecom Limited & Anr.* decided on 9.3.2010, where similar issue with regard to condonation of delay was raised. Their objections filed before the District Judge, Chandigarh were returned for re-filing before an appropriate court having territorial jurisdiction and petitioner/objector filed those objections in the Registry of this Court. The ld. Single Judge of this Court after taking note of the provisions contained under Section 14 of the Limitation Act and relying upon a judgment of the Apex Court in the case of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.* (2008) 7 SCC 169, observed as under:-

10. Mr. Agnani also pointed out that after the objection petition had been returned by the District Court, Chandigarh for re-filing in an appropriate court having territorial jurisdiction, petitioners-objectors had on 3rd January, 2002 refiled the said objection petition in the Registry of this Court. Mr. Agnani submitted that the petitioners-objectors were entitled to benefit of Section 14 of Limitation Act, 1963 (hereinafter referred to as “Act, 1963) in pursuance to Supreme Court’s judgment in the case of ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.*** reported in (2008) 7 SCC 169.

11. In rejoinder, Mr. Sharma stated that petitioners-objectors were not entitled to benefit of Section 14 of Act, 1963 as objection petition filed before the District Court, Chandigarh was not maintainable in view of the bar contained in Section 42 of Act, 1996, which reads as under:

“42. Jurisdiction. -Notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to an agreement any application under this Part has been made in a court, that alone shall have jurisdiction over the arbitral proceedings and all applications arising out of

that agreement and the arbitral proceedings shall be made in that court and in no other court.”

12. Mr. Sharma stated that this Court while dealing with respondent-claimant’s execution petition bearing Ex. P. 10/2001 had vide order dated 26th July, 2001 rejected petitioners-objectors’ defence that execution petition should not be proceeded with in view of the objections filed by them before the District Court, Chandigarh. In the said order, learned Single Judge of this Court had held that in view of the bar contained in Section 42 of Act, 1996, objections filed by petitioners-objectors were without jurisdiction. Mr. Sharma submitted that in view of the aforesaid order, petitioners-objectors could not claim benefit of Section 14 of Act, 1963 for the period 26th July, 2001 to 23rd November, 2001 as Section 34 proceedings during the said period were certainly not proceeded with either in good faith or with due diligence.

13. Having heard the parties at some length, I am of the opinion that it would be appropriate to first refer to Section 34(3) of Act, 1996 which provides a period of limitation for filing objections to an arbitral award. The said sub-section is reproduced hereinbelow :-

“34. Application for setting aside arbitral award. –

xxxx xxxx xxxx xxxx

(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.”

14. Consequently, three months is the period of limitation for filing objections to an arbitral award. However, Courts have the power to condone a further delay of thirty days if sufficient cause is shown. Accordingly, three months plus thirty days

is the maximum period within which an objection petition challenging an arbitral award can be filed. In fact, Supreme Court in **Union of India vs. Popular Construction Co.** reported in **(2001) 8 SCC 470** after referring to Section 34 of the Act, 1996 has held as under:-

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

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14. Here 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 unextendable by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need “to minimize the supervisory role of courts in the arbitral process”. This O.M.P. 17/2002 objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

“5. Extent of judicial intervention– Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

15. The “Part” referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that sub-section.

Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that

“where the time for making an application to set aside the arbitral award under Section 34 has expired... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”.

6. The learned Single further observed:-

15. Undoubtedly, keeping in view the observations of Supreme Court in **Consolidated Engineering Enterprises'** case (supra), petitioners would certainly be entitled to exclusion of time that they spent in prosecuting with due diligence a proceeding in another Court even though the said Court did not have jurisdiction to entertain the same. The necessary ingredients of Section 14 of Act, 1963 which have to be complied with by petitioner before it can avail of the said benefit have been stipulated in **Consolidated Engineering Enterprises'** case (supra) itself. The relevant observations of Supreme Court in **Consolidated Engineering Enterprises'** case (supra) read as under :-

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service: (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; (2) The prior proceeding had been prosecuted with due diligence and in good faith; (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and; (5) Both the proceedings are in a court.

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31. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essential prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a

court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.”

7. In the facts of the case Union Of India & Anr {Supra), taking note of the copy of the letter dated 29.09.2000 placed on record by Mr.Agnani, counsel for the objector it was observed that despite receiving another corrected copy of the impugned award by the Chairman/Secretary of the appellant on 29.09.2000, coupled with letter dated 29.09.2000, starting point of the limitation for the purpose of Section 34(3) of the Act, 1996 having started from the date of the service of the impugned award, the objector having not filed the objections within the jurisdiction of the competent court within time and also having taken note of an order dated 26.07.2001 passing in a similar OMP where the appellant/objector himself took objection of Section 42 of the Act, where, a specific finding was returned that, the petitioners/objectors filed an objection petition that Chandigarh Court was without jurisdiction, the Court observed that:-

“.....despite said finding petitioners-objectors had not taken any step to immediately withdraw its objection petition filed before the District Judge, Chandigarh. In fact, it was only upon respondent-claimant’s application that the District Judge, Chandigarh directed return of objection petition vide order dated 19th November, 2001. Accordingly, in my opinion, the petitioners-objectors

would not be entitled to benefit of Section 14 of Act, 1963 for the period 26th July, 2001 to 19th November, 2001. Consequently, if benefit of this period is not given to petitioners-objectors, then also the present petition would be beyond limitation. Accordingly, present objection petition having been filed beyond the limitation period is dismissed, but with no order as to costs.”

8. In the present case also the first proceeding under the Arbitration and Conciliation Act U/s 9 thereof was filed by the respondent before the District Judge being Suit No 422/2002 and 423/2002 which was decided by the District Judge. Thus in view of the provisions contained under Section 42 of the Arbitration and Conciliation Act, any further proceedings ought to have been taken before the said Court. However at one stage another OMP was moved by the respondent before this Court registered as OMP No. 165/2003. The jurisdiction of this Court in the said OMP No 165/2003 was objected to by the appellant themselves on the ground that the said OMP having been filed in this Court was not maintainable on the ground of jurisdiction inasmuch as it ought to have been filed before the District Judge in the light of Section 42 of the Arbitration and Conciliation Act. The said OMP was therefore dismissed by this Court as withdrawn vide order dated 17.11.2003.

9. In view of the aforesaid, the appellant was fully aware and conscious of the fact that in case any objections were to be filed against an award given by the arbitrator in this case those objections ought to have been filed before the District Judge. The award in this case was given by the arbitrator on 30.10.2003. Copy thereof was delivered to the appellant. Thus, the limitation to file objections thus commenced thereon. The objections were not filed before the District Judge within the limitation prescribed, i.e. neither in 90 days nor in extended period of 30 days with the leave of the Court. However, objections were filed before this Court. The respondent took an objection to the jurisdiction of this Court to decide those objections. That objection was allowed by this Court vide order dated 11.04.2005. It is the case of the appellant that after they received the copy of the aforesaid order on 24.05.2005, they filed objections in the Court of District Judge on 25.05.2005. It was pleaded by them that proceedings undertaken by them before this

Court having filed objections earlier in this Court should be considered as good grounds for condoning the delay in filing the objections as the proceedings taken by them before this Court was in good faith and with due diligence and therefore they invoked Section 14 of the Limitation Act.

10. In the aforesaid facts it was contended on behalf of the respondent that the appellant themselves being fully aware of the jurisdiction of the District Judge where they should have filed the objections within limitation having not done so and having filed the objections in this Court knowing full well that filing of such objections was not in accordance with law inasmuch as they themselves took objections in this Court when an earlier OMP was filed by the respondent in this Court being OMP No. 165/2003, it cannot be said that the re-filing of the objections in the District Court after they were returned by this Court vide order dated 11.04.2005 the delay in filing the objections should be condoned on account of proceedings undertaken by the appellant before this Court in good faith and with due diligence.

11. The aforesaid submissions of the counsel for the respondent needs consideration in the facts of the case and for the reasons given by the learned Single Judge while disposing of the case of Union Of India & Anr Vs Haryana Telecom Limited & Anr (Supra) vide order dated 09.03.2010 as quoted above have to be accepted.

12. In view of the aforesaid, there is no infirmity in the order passed by the Addl. District Judge having dismissed the objections on the ground of delay. The appeal is therefore dismissed with no orders as to costs.

C.M. 2592/2010(stay)

In view of the above, the application stands disposed of having become infructuous.

MOOL CHAND GARG, J

JANUARY 06, 2011
'sg/dc'