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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 563/2011

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Judgment dated 14.02.2012

UNION OF INDIA

..... Petitioner

Through : Mr. V.K. Tandon, Adv.

Versus

M/S OMAXE LIMITED

..... Respondent

Through : Mr. Ashok Sharma, Adv. for Mr.S.S.
Dalal, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A.NO.12149/2011.

1. This is an application filed by petitioner under Section 5 of Limitation Act seeking condonation of 190 days delay in re-filing the present objections under Section 34 of Arbitration and Conciliation Act.
2. The undisputed facts, which have led to the filing of present application, are that an award was made and published by the Arbitrator on 5.8.2010. The objections to the Award were filed by the petitioner on 8.11.2010 within the period of limitation.
3. Learned counsel for the petitioner submits that present objections were filed by the petitioner within the period of limitation, however, the objections were returned by the Registry on account of certain defects. Counsel next submits that after the clerk collected the objections from the

Registry on 9.11.2010, his wife, who was pregnant, had some complications and she was advised complete bed rest. The Doctors also advised the clerk to take his wife at his native Village at Rajasthan for proper care. The clerk along with his wife went to his native village and returned back to Delhi only after 10 days. The clerk was under the impression that objections have been removed and the same has been re-filed, however, the objections had got tagged in another file.

4. Reasons for condonation of delay in re-filing the objections are stated in paras 2-6 of the present application. Paras 2-6 of the application read as under:

“2. That the said objection petition was filed within the limitation period on 8.11.2010. The registry of the Hon’ble High Court while scrutinizing the said file found some defects in filing the said petition. The same was collected by the counsel’s clerk from the registry on 09.11.10 and put it in the chamber for removing the defects on next day.

3. It is respectfully submitted that the wife of the clerk was seven month pregnant, suddenly on 9.11.2010 itself some complications occurred to the wife of the clerk. The clerk took her to the nearest doctor who advised her for the complete rest.

4. That following the advice of the doctor the clerk took her wife to his native village at District Palli, Rajasthan for the proper care and cautious delivery of baby. He came back to Delhi leaving her wife his native place for the better care and joined office after 10 days. But unfortunately during this period when the clerk was at his native place the other clerk by mistake tagged the file in question with some other file. Consequently, finding the said file not in the basket of incomplete work, the previous clerk thought that the same has been filed in the registry after removing the defects.

5. It is respectfully submitted that it becomes more worst when the said case was totally skipped out of the mind of the counsel also. But incidentally at the time of looking the file along with which the file in question was got tagged, it revealed that the file in question has still not been re-filed.

6. That immediately the defects were got removed and accordingly the same is filed before the registry after lapse of 190 days.”
5. Learned counsel for the respondent has vehemently opposed the present application for condonation of delay in re-filing the objections on two grounds firstly the present application is vague and lacks material particulars and secondly this application does not disclose sufficient grounds for condonation of 190 days delay in re-filing the objections. Counsel further submits that petitioner is a Department, which has its own Law Office and a Legal Department, and they are well aware about the period of limitation and the law on the subject. It was for the petitioner to really have taken appropriate steps to have the objections re-filed within the prescribed period.
6. Counsel for the respondent relied upon **Union of India Vs. M/s. Popular Construction Co.** AIR 2001 SC 4010, wherein the Apex Court has held that having regard to the aim and object of the Arbitration & Conciliation Act, 1996 the delay in filing the objections beyond 120 days cannot be condoned. Counsel for respondent submits that what cannot be achieved directly can certainly be not allowed to be achieved indirectly. Counsel for the respondent submits that while the Supreme Court has held that beyond 120 days there can be no condonation of delay in filing objection, this court cannot condone delay of 190 days in re-filing, in view of the fact that there are no cogent reasons for the same.
7. Heard counsel for the parties and also perused the present application filed by the petitioner seeking condonation of delay in re-filing the objections. Before dealing with the arguments of counsel for the parties, I deem it appropriate to re-visit the law laid down by the Apex Court on the subject in question. In the case **Union of India v. Popular Construction**

(Supra) the Apex Court has held that the Act prescribes a mandatory period of limitation of three months for filing objections against an award which could at most be extended by another 30 days. It has further been held that beyond the period of 30 days the Court is powerless to condone the delay. The question of condonation of delay in re-filing is to be considered under the Scheme of the Act, which has prescribed the period of limitation for filing objections i.e. 90 + 30 days ‘but not thereafter’. In the case of Gautam Associates Vs. Food Corporation of India (2009) 111 DRJ 744 it has been held that condonation of delay in a petition under Section 34 has to be viewed differently than the condonation of delay in other cases because if there is unnecessary liberalness in condonation of delay, then the ratio of the Supreme Court in the case of Union of India v. Popular Construction (Supra) will be set at naught. The very object of arbitration is speedy justice and quick determination of the disputes.

8. In the case of Executive Engineer Vs. Shree Ram Construction Co. 2010 (120) DRJ at page 615 (a decision of the Division Bench of this court), the Division Bench has observed that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business contracts arise. In the case of Executive Engineer (Supra) the Division Bench had an occasion to deal with four petitions [FAO(OS)] which had been filed against different orders of a Single Judge of this Court. The relevant paragraphs 29 and 41 of the Judgment are reproduced below:

“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.

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 re-filing 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.”

9. The facts of the present case are to be considered keeping in view the judgments relied upon by counsel for the parties and the law laid down by the Supreme Court.
10. While dealing with an application for condonation of delay, the court must satisfy itself that the delay was due to bona fide reasons and not on account of inaction, carelessness or negligence on the part of the petitioner. The grounds in the application are devoid of particulars.
11. Having regard to the settled position of law and applying the same to the facts of the present case delay of 190 days in re-filing the objections

cannot be condoned on account of complete inaction and negligence on the part of the petitioner. The grounds for condonation of delay do not inspire confidence. The petitioner has shifted the entire burden on the clerk of the counsel for the petitioner, whereas it was the responsibility of the petitioner to ensure that the objections are filed, objections if any removed and thereafter listed for hearing. In case the objections had been misplaced, appropriate steps should have been taken at the earliest opportunity to file a duplicate copy of the same. As observed by the Division Bench any liberality in condoning the delay in re-filing, in the facts of the present case, would run contrary to the intention of the Parliament. In the facts of the present case, the delay in re-filing, for which there are no bona fide reasons or explanation, cannot be condoned as the same would run contrary to the mandate of the legislature.

12. In view of above, present application cannot be allowed and the same is accordingly dismissed.

O.M.P. 563/2011

13. In view of the order passed in I.A.NO.12149/2011, present petition is beyond the period of limitation and the same is accordingly dismissed.

G.S.SISTANI, J

FEBRUARY 14, 2012

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