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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.09.2013

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O.M.P. 477/2013

UNION OF INDIA

..... PETITIONER

versus

M/S RAVINDER KAPOOR

..... RESPONDENT

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Anuj Aggarwal and Mr. Gaurav Khanna,
Advocates

For the Respondent: Mr. J.C. Seth, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

IA No.7795/2013 (condonation of delay in filing the captioned petition) and
IA No.7796/2013 (condonation of delay in re-filing the captioned petition)

1. The captioned applications have been filed by the applicant/petitioner. The first application being: IA No. 7795/2013 is for condonation of delay in filing the petition under Section 34 of the Arbitration and conciliation Act, 1996 (in short the Act), while the second application being: IA No.7796/2013 is for condonation of delay in re-filing.

2. In IA No.7795/2013 the petitioner avers that, the delay in initial filing of the petition is 14 days whereas, in the second application, being: IA No.7796/2013 it is stated that delay in re-filing the petition is 390 days. In order to adjudicate upon these applications, the following dates require to be noticed. These dates are not in dispute.

3. The award was passed by the sole arbitrator, on 29.08.2011, in respect of which, an application was made by the non-applicant/ respondent for rectification. The application, was evidently filed, according to the petitioner, on 27.09.2011. The learned arbitrator rectified the award, on 27.10.2011. The applicant/petitioner claims that the rectified award was received by it on 04.11.2011.

4. The petition under Section 34 of the Act was, however, filed on 17.02.2012, whereas according to the applicant/petitioner it ought to have been filed by 04.02.2012. There is, therefore, a delay in initial filing of atleast 13 days.

5. A perusal of the record of the Registry shows that objections were raised by the Registry, on 18.02.2012. The applicant/petitioner received back the petition with objections, on 20.02.2012.

5.1 A perusal of the averments made in paragraph 4 of the application seeking condonation of the delay in re-filing, would show that, the applicant/petitioner had not, to begin with, filed an application to seek condonation of delay in the initial filing of the petition.

5.2 It is also averred in paragraph 6 of the application for condonation of delay in re-filing, that the file was lost in the office of the counsel.

5.3 It appears that only on receiving a notice in the execution petition filed by the respondent being: Ex. P. 6/2013, in January, 2013, that the petitioner, once again, woke up to the fact that the petition under Section 34 of the Act had to be re-filed, after removing objections.

6. In paragraphs 8 and 9 of the application for condonation of delay in re-filing, it is averred that the petition could not be re-filed as the counsel had to obtain necessary approvals for paying ad valorem court fee. Admittedly, the petition was re-filed after removal of objections and alongwith the requisite court fee only on 12.04.2013. As indicated above,

according to the petitioner / applicant delay in re-filing the petition is 390 days.

7. The learned counsel for the petitioner has argued that the delay was not deliberate. The initial institution of the petition under Section 34 of the Act was within the 30 days period post the expiry of the three months period after the receipt of the rectified award and that therefore, the delay was nominal in so far as the initial filing was concerned.

8. As regards the delay in re-filing is concerned, according to the counsel for the applicant/petitioner, a large part of the delay was attributable to the case file being lost on account of shifting of office premises by the advocate concerned, and on account of the fact that the concerned officials of the applicant/petitioner had to be convinced with regard to the necessity for payment of ad valorem court fee.

9. The learned counsel for the petitioner thus prays that, a lenient view of the matter be taken.

10. On the other hand, Mr. Seth, who appears for the respondent / non-applicant says that this court has repeatedly spurned any plea for condonation of delay, which emanates from negligence and default. It is Mr. Seth's submission that neither the application for condonation of delay in initial filing nor the application for condonation of delay in re-filing give cogent reasons, which should persuade the court as to the sufficiency of cause, which is a mandatory requirement for condonation of delay.

10.1 Mr. Seth in this behalf has relied upon several judgments. These being : *Union of India Vs. Popular Construction Co, (2001) 8 SCC 470; M/s. Gautam Associates Vs. Food Corporation of India, (2010) 2 R.A.J. 595 (Del); Union of India Vs. M/s. Harbhagwan Harbhajan Lal, 2010 (6) R.A.J. 310 (Del).*

11. I have heard the learned counsel for the parties and perused the record. As indicated hereinabove, the dates set out above are not in dispute. There is admittedly a delay of at least 13 days in the initial filing of the petition beyond the period of three months set out in Section 34(3) of the Act.

11.1 The only reason supplied in the application for condoning this delay is that for the first time, the counsel for the petitioner was appointed on 08.02.2012, and thereafter, time was spent in obtaining instructions and drafting the petition. While it may be true that the period between the appointment of the lawyer for the petitioner and filing of the petition under Section 34 is not too large, there is certainly no explanation as to the delay which occurred between the date of receipt of the rectified award i.e., 04.11.2011 and the date of appointment of lawyer i.e., 08.02.2012. The period of three months, which the legislature has provided to enable an aggrieved party to approach this court, I would think, factors in such possibilities. The petitioner for reasons best known to it did not act with alacrity to protect its interest and file, the captioned petition, within the stipulated period of three months; so that the initial filing, was not delayed.

11.2 That apart, there is certainly a large period of delay relatable to re-filing of the petition, which is left unexplained. As per the record, the objections were raised by the Registry on 18.02.2012. The petition was received back by the counsel on 20.02.2012, and thereafter, re-filed only on 12.04.2013.

11.3 Apart from vague averments that the file of the case was misplaced due to shifting of the office, and deliberations being held with the officials of the petitioner with regard to the payment of ad valorem court fee, there is no cogent and acceptable explanation set out in the captioned application. Though, the application is accompanied by an affidavit of the counsel, there

is no articulation of the fact as to when, the case file was traced. There is an attempt to obfuscate the dates pertaining to the point in time when the case file apparently re-surfaced and the period spent in sorting out the issue of payment of ad valorem court fee inter se the official(s) of the petitioner and the counsel engaged on its behalf.

11.4 A Division Bench of this court in the case of *The Executive Engineer (Irrigation & Flood Control) vs Shree Ram Construction Co. 2010 (10) AD (Delhi) 180* has deprecated the practice of liberalities being adopted in condoning the delay in re-filing. According to the Division Bench, this approach goes against the mandate of the statute, as articulated in the judgment of the Supreme Court in the case of *Union of India vs. Popular Construction Co.* Another Division Bench of this court, in the case of *Delhi Transco Ltd. and Anr. Vs. Hythro Engineers Pvt. Ltd. 2012 (3) Arb. L.R. 349 (Delhi)* has followed and reiterated the view taken in *Shree Ram Construction* case. As a matter of fact the Division Bench notes that special petition filed to assail the judgment in *Shree Ram Construction* case, was dismissed.

11.5 The Division Bench in *Delhi Transco* case has, inter alia, held that where a delay in re-filing goes beyond a cumulative aggregate of 30 days, it would be construed as a fresh institution under Rule 5 Chapter I Part A of Vol. 5 of the Delhi High Court Rules and Orders. The Division Bench, in effect, cautions that when objections are raised as per the aforementioned rules, the petition should be re-filed in seven (7) days, keeping in mind that the aggregate time does not exceed thirty (30) days.

12. It is neither the view of the Division Bench nor is it my view that the court does not have power to condone the delay in re-filing, if the initial filing is within the period prescribed under Section 34 (3) of the Act. The result, would turn, in my opinion, based on facts and circumstances

obtaining in each case. In this present case, I find that the explanations are vague and unacceptable. Callousness and neglect in failing to act with due promptness, cannot ever provide sufficient cause, which ordinarily is the measure adopted for condoning delay. Therefore, I do not propose to condone the delay. Accordingly, the captioned applications are dismissed.

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13. In view of the order passed in the captioned applications hereinabove, the captioned petition would also have to be dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

SEPTEMBER 23, 2013

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