

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

% Judgment delivered on: June 03, 2013

+ **FAO(OS) No.291/2013**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through Mr.Sunil Goel, Adv. with
Mr.Susheel Bhartiya, Adv.

versus

GAGAN SAHNI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH
HON'BLE MR. JUSTICE R.V.EASWAR

MANMOHAN SINGH, J. (Oral)

CM No.9406/2013 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM No.9407/2013 (for condonation of delay of 21 days in re-filing)

For the reasons stated in the application, the delay in re-filing is condoned. The application is disposed of.

CM No.9405/2013 (for condonation of delay of 221 days in filing)

1. The appellant has filed the appeal under Section XXXVII of the Arbitration and Conciliation Act, 1996 against the orders dated 4th May, 2012 and 30th July, 2012 passed by the learned Single Judge in OMP No.568/2006 whereby the objections filed by the appellant under Section

34 of the Arbitration and Conciliation Act, 1996 against the award rendered by the arbitrator on 20th July, 2006.

2. By the order dated 4th May, 2012, the objections were dismissed and in the subsequent order passed on 30th July, 2012, the application filed by the appellant, being I.A.No.13725/2012 for setting aside the order dated 4th May, 2012 and restoration of the petition was also dismissed. Along with the appeal, the appellant has also filed the interim application including application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of 221 days delay (CM No.9405/2013).

3. We have heard the learned counsel appearing on behalf of appellant in the application under Section 5 of the Limitation Act for condonation of delay of 221 days in filing the appeal. He submitted that the appellant corporation was trifurcated during the period and division of zones was being carried out. Therefore, staff and personnel of the appellant corporation were busy in the said division of zones and all the files were being moved arranged as per the new divisions and zones. Therefore, the delay has happened in filing the appeal. There was some miscommunication by the department with counsel handling the case and record was sent to the legal department of the appellant corporation for opinion and it was decided to challenge the said order which took some time. Therefore, the prayer is made to condone the delay.

4. The appeal has been filed against the judgment wherein the objections filed by the appellant were dismissed on merit. If the entire scheme of the Act is understood in a positive manner, it appears that the Arbitration Act is a special law which provides for a period different from the prescribed under the Limitation Act.

5. This position is settled by the judgment debtor of the Supreme Court in the case of *State of Himachal Pradesh Vs. Himachal Techno Engineers*, (2010) 12 SCC 210 and *Union of India Vs. Popular Construction Co.*, (2001) 8 SCC 470.
6. The Division Bench in the case of *Executive Engineer v. Shree Ram Construction Co.*, 2010 (120) DRJ 615 (DB) (which, we may note has been upheld by the Supreme Court with the dismissal of the SLPs) in para 29 and 41 observed as follows:

“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) FAO(OS)665/2009, 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 refiling 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”.

7. It is in *Shree Ram Construction Co.* (supra) that the Court actually examined as to what is the magnitude of delay in re-filing, which the Court may tolerate and permit to be condoned in a given case. Obviously, there cannot be any hard & fast rule in that respect, and the Court would have to examine each case on its own facts & merits and to take a call whether, or not, to condone the delay in re-filing the objection petition, when the initial filing of the petition is within the period of limitation. However, what is to be borne in mind by the Court is that the limitation period is limited by the Act to three months, which is extendable, at the most, by another thirty days, subject to sufficient cause being disclosed by the petitioner to explain the delay beyond the period of three months. Therefore, it cannot be that a petitioner by causing

delay in re-filing of the objection petition, delays the re-filing to an extent which goes well beyond even the period of three months & thirty days from the date when the limitation for filing the objections begins to run. If the delay in re-filing is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of more stringent norms while considering the application for condonation of delay in re-filing, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and where the re-filing takes place much after the expiry of the period of three months & thirty days and, that too, without any real justifiable cause or reason.

8. In *Shree Ram Construction Co.* (supra) the learned Single Judge has applied his mind to the facts of this case on the basis of the correct legal proposition laid down by the Division Bench to the effect that the learned Single Judge rightly observes that the appellant was highly careless in pursuing the matter of re-filing of objections and that the appellant had not been able to satisfy the Court that the delay in re-filing the objections was on account of bona fide reasons. Learned Single

Judge also observed that the delay was, in fact, on account of carelessness, inaction and negligence on the part of the appellant. The appellant had the benefit of a legal Department whose responsibility was to see that the objections were filed within the period of limitation. It was also their responsibility to ensure that half baked objections are not filed and thereafter, in case any objection/defect is raised, the same is removed within the time allotted and to ensure that the same is re-filed as early as possible to safeguard their own interest.

9. No doubt, these decisions have discussed the situation when the objections under Section 34 of the Act are not filed in time or there was a delay of more than thirty days in re-filing, still the delay was not condoned. In the present case, situation is more serious as there is unexplained delay of 221 days in filing of an appeal. The entire application filed by the appellant lacks explanation for delay. It is evident from reading of an application that the appellant was careless, inactive and negligent which cannot be taken lightly.

10. If the entire application is perused, the same is suffering from specific details about the exact date of trifurcation of the appellant corporation i.e. division of zones. It is not stated in the application that when the communication about the dismissal of objections was given by the counsel to the corporation nor any detail is given that after dismissal of the application for restoration of OMP when the appellant was informed. It cannot be denied that during such a long period the corporation had not prosecuted its litigation in Court due to division of the zones. The details of the miscommunication by the department and counsel are also not mentioned in the application. It is also not stated that when the entire record pertaining to the present case was completed.

In nutshell, the statement made in the application is vague. Due to lack of details coupled with long delay which has not properly been explained by the applicant, the prayer made in the application cannot be allowed, as otherwise the same very purpose for an early disposal of Arbitration cases would be defeated. Therefore, the same is dismissed.

FAO(OS) No.291/2013 & CM No.9404/2013 (stay)

In view of the dismissal of I.A.No.9405/2013, the appeal has become time barred. The same is also dismissed. No costs.

The interim application has also become infructuous and the same is disposed of as such.

**MANMOHAN SINGH
(VACATION JUDGE)**

**R.V.EASWAR
(VACATION JUDGE)**

JUNE 03, 2013/jk