

forms part of the final award dated 24.05.2010), passed by the Sole Arbitrator.

2. The admitted facts are that award in this case was passed on 24th May, 2010. The petitioner filed its objection against the said award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) before the learned Additional District Judge, Patiala House courts on 7th September, 2010.

3. Vide the order dated 7th February, 2013, the learned trial court at Patiala House returned the objections filed by the petitioner on the ground of want of pecuniary jurisdiction to deal with the matter as the award was valued at more than Rs.20 lacs. On 15th February, 2013, the objections under Section 34 of the Act were filed by the petitioner in the registry of this Court. On 4th April, 2013, the insufficient court fee was made good and on 17th /18th May, 2013, the objections were finally cleared by the Registry.

4. The petitioner vide his application under Section 5 of the Limitation Act has prayed for condonation of delay on the ground that he had pursued his arbitration application No. 294/2010 dated 7th September, 2010 under bonafide mistake and good faith before the learned District Judge, on the presumption that the learned District Judge had the jurisdiction to deal with the matter.

5. It is further submitted that the earlier award was challenged by him before this court and the said award was set aside and at that time, this court had the pecuniary jurisdiction over an award above the value of Rs. 5 lacs. In the meantime, the pecuniary jurisdiction of the courts had changed and the pecuniary jurisdiction of the District Court was increased up to Rs.20 lacs. It is submitted that the award was less than of Rs. 20 lacs and he challenged the same before the learned District Judge. It is further submitted that Section 14 of the Limitation Act speaks of the exclusion of the period spent in prosecuting with due diligence

another civil proceeding, whether in a court of first instance or of appeal or revision, where the proceeding relates to the same matter in issue 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. Reliance is placed on the findings in the case of *State of Goa v. Western Builders (2006) 6 SCC 239*. It is submitted that the certified copies were supplied to him only on 14th February, 2013 and thereafter the petition under Section 34 of the Act was filed before the High Court of Delhi.

6. In the application for condonation of delay in re-filing, it is submitted that there is a short delay in re-filing which was neither intentional nor deliberate but has occurred due to the reasons beyond control of the petitioner. It is submitted that the Registry had raised certain objections and also asked to replace all dim documents/annexures which were voluminous and considerable time was taken for fresh typing of those documents and so re-filing could not be done within the prescribed time. It is prayed

that there was a delay of 60 days in re-filing the petition which may also be condoned.

7. Both the applications have been contested by the respondent since notice of the applications was issued to him. It is submitted that this court has no jurisdiction to condone the delay in filing of the objections under Section 34 of the Act beyond the period of 90 days extendable to 30 more days. It is further argued that the petitioner has to disclose cogent reasons for delay in filing the objections under the Act beyond the Limitation of 90 days.

8. It has been argued on behalf of respondent that the objections in this Court were first filed on 15th February, 2013 when they were returned by the Registry for being filed in a new format. The objections thereafter were filed on 12th March, 2013 and they were filed after being redrafted and totally changed and therefore it can only be said that the objections if any were filed on 12th March, 2013. It is further alleged that the petitioner has

not disclosed about the objections under Section 34 of the Act which he allegedly filed on 15th February, 2013.

9. The record also shows that initially a court fee of Rs.19,000/- was filed with the objections but since the said court fee was insufficient an additional court fee of Rs.750/- was purchased on 5th April, 2013 and filed subsequently. It is submitted that since the court fee was purchased only on 5th April, 2013, it cannot be said that the objections were filed before the court fee was made good.

10. It is submitted that since the petition has been filed beyond 90 days plus 30 days and since Section 5 of the Limitation Act is not applicable, the delay cannot be condoned, the petition is barred by Limitation and is not maintainable. (b to b). It is argued that in no circumstance, the delay can be extended beyond 90 days plus 30 days. Reliance has been placed on *Union of India v. Popular Construction Co. (2001) 8 SCC 470* and *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation, Full*

Bench, (2008) 8 SCC 169 (page 23). I have heard the arguments the parties and gone through the case law relied upon.

11. Section 34(3) prescribes the period of limitation for filing objections against the Award under Section 34 of the Act. The Supreme Court in ***Union of India v. Popular Construction (2001) 8 SCC 470***, while interpreting the provisions of Section 34(3) of the Act, observed as under:-

Para 12 A to A

“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 subsection (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”.

12. The law laid down in the case *supra* makes it abundantly clear that the period of limitation in filing any petition under Section 34 of the Act cannot be extended beyond ninety plus thirty days.

13. The sole point for consideration before this court, therefore, is, whether the present petition is within the period of limitation prescribed under Section 34 (3) of the Act. The sub Section (3) of Section 34 of the said Act provides that an objection to an award can be filed within 90 days from the date of receipt of the award. For sufficient reasons, showing the inability to file the objections within 90 days, the objections can be filed within further 30 days to 90 days. It is also clear that the filing of the objections in 30 days to 90 days is not automatic. The petitioner is required to seek condonation of delay in filing objections beyond ninety days by showing a reasonable reasons for not being able to file the objections within the prescribed period of limitation of 90 days. In case of *UOI v. Popular*

Construction Company (2001) 8 SCC 470, the Supreme Court has clearly held that the benefit of condonation of delay is not available to the petitioner in filing the objections under Section 34 of the Act if the same has been filed beyond 30 days to 90 days. The court has clearly held *“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”*.

14. In the present case, the award was passed on 24th May, 2010 and the petitioner has stated that he had received the award on 7th June, 2010. In his rejoinder, however, he has contended that he only received the unsigned photocopy of the award on 7th June, 2010 through courier. He approached the Arbitrator vide letter dated 31st August, 2010 and the Arbitrator had authenticated the said photocopy by signing it on 1st September, 2010 and it is argued that the period of limitation of 90 days in

view of Section 31 (5) and Section 34 of the Act starts running from the date he received the signed copy of the arbitration award and thus it had started running from 1st September, 2010.

15. Learned counsel for the respondent has argued that the petitioner has made out this story for the first time. This fact has not been mentioned by him in any of his two applications for the condonation of delay. It is further contended that the falsehood is apparent from the contention of the petitioner itself that he had approached the Arbitrator with a letter dated 31st August, 2010 and received the photocopy duly signed by the arbitrator on 1st September, 2010. It is argued that it is impossible that the arbitrator would have received his letter before 1st September, 2010 even if the letter dated 31st August, 2010 was posted by the petitioner to the learned arbitrator by courier. It is further argued that it is equally impossible for the arbitrator having received the letter of petitioner on 01.09.2010, signing it and sending it on the same day to petitioner and then, the petitioner also receiving it on

the same day.

16. The submission of the learned counsel for the respondent has lot of force in it. It is impossible that a letter dated 31st August, 2010 seeking authentication of the learned Arbitrator on the photocopy of an award, which was earlier received by the petitioner on 7th June, 2010, and having sent by courier, would have been received by Arbitrator before 01.09.2010 and equally impossible is the fact that the petitioner would have received the authentication on the said photocopy of award, under the original signatures of the Arbitrator on 01.09.2010 itself. This story does not inspire any confidence and is improbable and impossible. Even otherwise, the petitioner has himself alleged that he received the award on 7th June, 2010 by courier. His only contention is that it was a photocopy. Till the filing of the rejoinder, this fact had not been contended by the petitioner before any forum. For the first time in his rejoinder, has stated that on 7.06.2010, he had received unsigned photocopy of award.

It is strange that for more than three months that is with effect from 7th June, 2010 to 31st August, 2010, the petitioner and his team of advocates took no steps for applying for certified copies of the arbitral award or asking the arbitrator to send a signed copy of the award under Section 31 (5) of the Act. In the light of these facts, the petitioner's story seems improbable and unbelievable. In any case, the petitioner had challenged the said award vide his petition filed on 7th September, 2010 before the District court, Patiala House and it was returned on 7th February, 2013 with the liberty to raise the objection before the appropriate forum by the learned District Judge for want of pecuniary jurisdiction, since the valuation of the award was more than Rs. 20 lacs. The petitioner has claimed the exclusion of this period from 7th September, 2010 to 7th February, 2013 while calculating the period of limitation under Section 34(3) of the Act. It is apparent that since the copy of the award was received on 7th June, 2010 and the objections were filed before the District court on 7th September, 2010, the same were filed within 90 days and so the

period of limitation of 90 days laid down under Section 34(3) had been followed. The petitioner has relied upon a case of *State of Goa (supra)* in support of his contention that provisions of Section 14 of the Limitation Act are applicable to the proceedings under the Arbitration Act.

17. This judgment was relied upon by the Supreme Court in its subsequent judgment of *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others with Hatti Gold Mines Company Limited v. Vinay Equipments (2008) 7 SCC 169*, wherein, it has held as under:-

Para 22, 23

22. The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While

considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to

give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

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 4 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”.

18. Thus, the benefit of Section 14 of Limitation Act is open to the petitioner and he is entitled for exclusion of the period from 7th September, 2010 to 7th February, 2013 while computing the period of limitation under Section 34 (3) of the Act. As discussed above, period of 90 days for filing of the objections under Section 34 of the Act had already expired on 7th September, 2010 when the petitioner had filed its objections before the court of defective jurisdiction. The petition was returned by the District Court on 07.02.2013 for filing the same before Court of Competent Jurisdiction. The petitioner filed the objections in the High court on 15th February, 2013. The Registry raised the following objection on 16th February, 2013:-

***“1. The plaint be filed in
accordance with the new
format”***

19. After the plaint was returned to the petitioner, he was directed to re-file it within a week but the re-filing was done after a delay of more than three weeks on 12th March, 2013. The Registry again raised the following objections :-

(12 objections from Part- II B of the file)

*“1 It should be stated how Arbitration
Petition is maintainable(2)*

*2 Index/List of documents should be
paginated (3).*

*3 Caveat report be obtained and at the time
of each subsequent refilling and proof of
service be filed. (101)*

*4 Fresh Notice of Motion upon
Counsel for concerned respondent be filed if
3 days have elapsed since the date of last
service. Any amendments done in the petition
should also be informed/served to the
opposite/concerned party (102)*

5 *Petition/applications annexures/order/powere of attorney should be stamped (with court fees as per new amendment of 2012). (109)*

6 *Petition/Applications/MOP/Index/power of attorney be signed and dated.(110)*

7 *Left side margin of 4 c.m. be maintained. (111)*

8 *Affidavit be filed in support 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. No modification is allowed. It should be re-typed and attested. (112)*

9 *Fair typed copy of dim and hand written annexues be filed. (115)*

10 *Annexures be made true copy (at the bottom of each page) and signed.*

Annexure number should be marked property in the index as well as on top of the annexure file with the petition. (116)

11 Page numbering be done properly and it should be done in continuous running number. It should be done numerically as alpha-numeric page numbers are not allowed/ Double page numbering be deleted by proper fluiding. (119)

12 Petition/application be properly classified/correct nomenclature be given. (127)”

20. The Registry directed the petitioner to remove these objections and the petition was returned with direction to refile the same within a week. The petitioner was able to remove all the objections including that of the deficient court fee only on 17th /18th May, 2013.

21. The petitioner has moved an application for condonation of

delay in re-filing on the ground that the documents and the annexures were voluminous and which needed fresh typing and so the delay had occurred.

22. The issue of condonation of delay in re-filing has come up for consideration on several occasions before this court. This Court in its various pronouncements has elaborately discussed the law relating to condonation of delay in refilling. Order 41 Rule 3 of CPC enables the appellant to file his appeal after the expiry of period of limitation prescribed therein. It requires that the application be supported by an affidavit stating therein all the relevant facts to satisfy the court that he had sufficient cause for condonation of delay. The court retains the power either to reject the said application or to condone the delay.

23. Part G of Delhi High Court Rules, relates to the proceedings in the High Court of Delhi and Chapter I, Part A (a) deals with Judicial business relating to presentation and reception of Appeals, Petitions etc. and Rule 5 reads as under:

5. Amendment—*The Deputy Registrar Assistant Registrar, Incharge 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, Asstt. 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, Asstt. Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Note—The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal.]....

Take from OMP 114/2013

24. Sub Rule 3 clearly postulates that after a memo of appeal is filed beyond the time allotted by the Deputy Registrar, Assistant Registrar, Incharge of the Filing counter, under sub-rule (1) it would be considered a fresh institution. In case of ***Asha Sharma and Ors. V. Sanimiya Vanijiya Private Limited and others (2009) 162 DLT 542(DB)***, the Division Bench of this court on considering the provisions in part G Chapter 1 of Rule 5 part A sub rule (a) has observed as under:-

Page 30 b to b

“9 It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order 41 Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the Registry, is filed after more than 30 days, it shall be

considered as a fresh appeal, filed on the date on which it is presented after removal of the defects”.

25. The above reproductions of the proceedings before the Registry clearly shows that on 15th February, 2013 the petitioner did not even bother to file the plaint in accordance with the new format. It would be absurd to think that the legal minds, engaged by the petitioner for pursuing their case were not aware of the new format. It only shows the casual approach of the petitioner. Moreover, it is also apparent that when the petition was filed it was filed with a deficient court fee and it was only after a considerable lapse of time, that the deficient court fee was made good. This objection could be removed only on 17th / 18th May 2013. Documents show the Petitioner purchased court fee only on 11th February, 2013 and 5th April, 2013.

26. The petition was returned as not being filed as per the format and the petitioner did not re-file it within a week but filed

it only on 12th March, 2013 that too with deficient court fee and the registry also find several defects in filing as (enumerated about above). The date of filing of the objections that the petition can only be taken as 12th March, 2013 and not as 16th February, 2013 as on that date, there was no plaint before registry (Plaint being not filed in new format as per High Court rules and regulations). Even after filing the petition on 12th March, 2013, the petitioner took more than 60 days in removing the objections. It was refilled on 18th May, 2013. The period, of filing, thus has travelled beyond 90 days plus 30 days as prescribed under Section 34(3) of the Act.

27. The next question that arises is whether this delay in re-filing beyond the extended period of 30 days prescribed in proviso to Section 34(3) of the Act can be condoned or not. This issue was discussed by the Division Bench of this court in ***Executive Engineer v. Sri Ram Construction Company 2010 (120) DRJ 615 (DB)*** in para Nos. 29 and 41 and has observed as

follows:-

Page 3 (c to c) Para 29, 41

“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".

28. In another judgment delivered by the Division Bench of this court, in case of ***Delhi Transco Limited & Anr. vs. Hythro Engineers Private Limited*** 2012 (3) ARBLR 349 (Delhi), it has been observed:-

Page 5 (D to d)

".....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.

29. Besides the delay in re-filing, there is no explanation coming forth from the appellant/petitioner on the provisions of Rule 5 Chapter 1 part A of Volume 5 of High Court Rules and orders wherein if the defects are not removed within 30 days, it shall be considered a fresh filing. In case ***Asha Sharma and others (supra)***, the Division Bench has also held that the date of re-filing be considered as the date of filing

30. The petitioner has given only one explanation for the delay in re-filing and that is that he was unable to remove the objections and the defects as the fresh typing of voluminous documents and annexures took lot of time. No explanation has come forward

from the petitioner regarding his inability to file the petition in a proper format as mentioned in the objections dated 16th February, 2013. On 16.02.2013, registry did not ask petitioner to refile its documents after retyping it. Objection was that Complaint was not as per the new format. It was only on refiling the petition in new format that registry took 12 objections (reproduced above) and petitioner took 60 mere days to remove all those objections. No cogent explanation is forthcoming from petitioner for such delay. It was the petitioner who has to give reasonable grounds or reasons which prevented him from filing or refiling the petition within the specified period. In view of Asha Sharma case (supra) the date of filing of present petition is 18.05.2013, on which it was presented after removal of defects.

31. In view of above discussions, the delay in filing and re-filing beyond extended period of 30 days plus 90 days cannot be condoned. The petition, since, have been filed beyond period of limitation prescribed under Section 34(3) of the Arbitration and

Conciliation Act, 1996, the same is hereby dismissed.

OMP No. 509/2013 & IA No. 8448/2013(stay)

32. In view of the order passed in the IA No. 8446/2013 for condonation of delay and IA No. 8449/2013 for condonation of delay in re-filing, the instant petition and IA No. 8448/2013 for stay stands disposed of being barred by limitation.

33 . No order as to costs.

(DEEPA SHARMA)
JUDGE

AUGUST 27, 2014

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