

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

+ **FAO No.333/2012**

% **15th May, 2014**

M/S GE MONEY FINANCIAL SERVICES PVT. LTD. Appellant
Through: Mr. Suman Tripathy, Advocate.

Versus

MR. JASWANT SINGH & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**+ FAO No.333/2012 and C.M. Nos.13516/2012 (stay) & 13517/2012
(condonation of delay of 326 days)**

1. This application being C.M. No.13517/2012 is filed seeking condonation of delay of 326 days in filing of the present appeal against the impugned judgment of the court below dated 31.5.2011 by which the objections of the appellant under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') have been dismissed as barred by time.

2. Even after the objections were dismissed as time barred, the

appellant is no wiser, because even this appeal is filed with a delay of 326 days. The reasons for seeking condonation of delay are contained in paras 3 to 9 of the application and which read as under:-

“3. That the impugned order was passed on 31.05.2011 and in June 2011 Courts were closed for summer vacations, therefore the counsel for the Appellant applied for the Certified copy of the said order on 04.07.2011 immediately after the vacations. The Certified Copy of the said order was delivered on 07.07.2011 to the counsel for the Appellant.

4. That the Counsel for the Appellant Company informed Mr. Sanjay Gaur, Legal Head Collections (Mortgage) about passing of the said order and advised him to file appeal against the said order. The copy of the said Order was also delivered by the Concern Department of the Appellant Company on and about 10.07.2011. That Mr. Sanjay Gaur then informed the counsel that he would take necessary approvals from the Senior Management including the Chief Executing Officer for filing of the appeal.

5. That in last week of July 2011, process for shifting of Mr. Sanjay Gaur from Legal Collections Department to Mortgage Sales Department was initiated. As a result Mr. Sanjay Gaur became involved with said process, which included obtaining references/clearances from related departments. It is submitted that due to the heavy work load and change in portfolio of Mr. Sanjay Gaur, he inadvertently did not handover the details of the present matter to his successor. Therefore, above case was never put before the senior management for their approval with regard to filing of appeal in aforesaid matter. The e-mail showing shifting of Mr. Sanjay Gaur from Mortgage to Sales is annexed herewith as Annexure-A1.

6. That in May 2012, the bailiff appointed by Trial Court visited the office of the Appellant Company for executing the warrant of attachment issued by the Executing Court with respect to the execution of the award passed in above case by the Respondent

No.3.

7. That present in-charge of the Mortgage Portfolio was shocked to receive said warrant and thereafter made enquiry to know the history of said case. That as in June 2012, the courts were closed due to vacation, therefore the Appellant could not contact its panel lawyers to know as to which law firm/lawyer the case was marked. That in first week of July 2012, Mr. Jaideep Sharma started enquiring from the panel counsels to know about said case.

8. That on 16th of July 2012, when the present counsel was contacted. It was confirmed that the aforesaid case was handled by them and no appeal was filed against the impugned order for want of instructions. Thereafter, upon compiling the entire file Mr. Jaideep Sharma immediately took the approval from his superiors for filing of appeal.

9. The present counsel was then given instruction on 19th July 2012 to file appeal. The Counsel then drafted the appeal at the earliest and filed the same on 25th July, 2012.”

3. A reading of the aforesaid paras shows that delay is sought to be condoned on the ground that Mr. Sanjay Gaur of the appellant company did not handover the details of the matter to his successor. However, I note that the averments are totally vague because no dates and particulars of the files which were handed over to the successor of Mr. Sanjay Gaur have been mentioned. Also, giving factual aspects for seeking condonation of delay is totally different from sufficient reasons for condonation of delay. Factual narration does not mean that there is an entitlement for condonation of delay because the factual narration must show sufficient cause so as to entitle a

person to seek condonation of delay. A reference to the aforesaid paras only show factual narration as differentiated from sufficient cause and therefore I refuse to accept the reason given for condonation of delay.

4. There is therefore no merit in this application and I would have dismissed the appeal as time barred, however, I have even looked at the merits of the appeal. The impugned judgment dismisses the objections as barred by time as they were filed beyond the period of 120 days. The Award in this case was passed on 21.9.2007 and due to certain disputes between the appellant-company and the arbitrator, Award was communicated to the appellant subsequently under the covering letter dated 24.1.2008. With respect to this letter dated 24.1.2008, the original postal receipt is on record and has been considered by the court below. The court below has therefore dismissed the objections as time barred by making the following observations:-

“3. The petition is resisted by the respondent on the grounds of limitation. It has been pointed out that the award was announced on 21.09.2007. The same was communicated to the petitioner herein vide the arbitrator’s letter dated 24.01.2008. The despatch of the award to the petitioner is duly supported by its postal receipt. The present petition which has been filed on 04.06.2009 is beyond the time permitted under the Act and therefore, the same being time barred cannot be entertained by this court.

4. The factum of communication of the award by registered post is denied by the petitioner. In fact, an affidavit had been filed by

the authorised representative of the petitioner Sh. Ansuman Prasad, stating that 61 cases had been referred to Mr. Sunil Jha for arbitration. Due to an unreasonable demand of fees, disputes had arisen with him in respect of clearance of his bill culminating in litigation, all proceedings before him were terminated. The affidavit further stated that no award was received by the petitioner and since there were number of cases endorsed to the said arbitrator, the postal receipt on record does not pertain to the award in hand. It is further pointed out by the Ld. Counsel for the petitioner that the award states:

“Since neither party has paid additional arbitration fee fixed at Rs.22,000/- (Rupees Twenty two thousand only) to be shared equally by both the parties, they can obtain a copy of the award on the payment of the above arbitration fee”.

5. In view of the above noting, it is argued that the proceedings had come to an end and it is obvious that the award was never sent in this case.

6. Having appraised the facts of this case I find that despite the aforesaid observation the award was communicated to the parties on 24.01.08. There is no bar on the arbitrator in doing so even if he has not received his fees. This appears to be the case at hand. Though the arbitration culminated in the award on 21.09.2007, it was communicated to the parties only vide letter dated 24.01.2008. The despatch of this award to the petitioner is substantiated by its original postal receipt on record.

7. Under such circumstances, the onus to disprove its receipt squarely lies on the shoulders of the petitioner. The affidavit filed does not give any details. Other than stating that since numerous correspondence was received from the arbitrator everyday, the postal receipt may not have been in respect of the Award. This submission is rather vague. There is no explanation, muchless an exact detail as to what was received by them vide the registered post. Mere denial is not enough to displace a right which has accrued in favour of the respondent. The Arbitration proceedings has the postal receipt as part of its record.

8. A perusal of the record also shows that termination of the

appointment of respondent no. 3 as the arbitrator in this case was much later i.e. vide letter dated 23.12.2008. As the award was passed during the subsistence of the Tribunal constituted at the behest of the petitioner themselves and communicated to them vide registered post dated 21.01.2008, prima facie the respondent's resistance on the point of limitation merits consideration. The present petition having been filed on 4.06.2009 is clearly beyond condonation."

5. In view of the above, besides the fact that there is no ground to condone the delay, there is even no merit in the appeal also because the objections were time barred. Once, objections are time barred, delay in filing of the same cannot be condoned in view of the judgment of the Supreme Court in the case of *Union of India Vs. M/s. Popular Construction Co. AIR 2001 SC 4010*.

6. The appeal and the applications are therefore dismissed, leaving the parties to bear their own costs.

MAY 15, 2014
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VALMIKI J. MEHTA, J.