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

+ O.M.P. 1127/2013

% Judgment reserved on : 07.08.2015

Judgment pronounced on : 10.09.2015

UNITED INSURANCE CO LTD. Petitioner

**Through : Mr. S.K. Ray, Mr. Amitava
Poddar, Advocates**

versus

MANISH KUMAR GUPTA Respondent

Through : Mr. Sanjeev Singh, Adv.

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HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

I.A. Nos. 18444/2013 (delay in filing) and 18445/2013 (delay in re-filing)

1. The present petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). Along with the petition the petitioner has also filed I.A.Nos.18444/2013 and 18445/2013 for the condonation of delay in filing and re-filing the present petition.

2. It is submitted that the award dated 10.04.2013 was received

by the counsel of the petitioner on 16.04.2013 and it was received by the party on 23.04.2013. It is submitted that the present petition was filed on 17.08.2013. It is submitted that in the process there was a delay of 25 days in filing which was neither intentional nor deliberate. It is submitted that delay had occurred in following the administrative procedure at different levels. The award was first sent to empanelled advocate on 24.05.2013 for opinion for challenging the award. The opinion was received on 10.06.2013. This opinion was thereafter sent to headquarters of the company at Chennai for approval. After obtaining the approval, the case was assigned to Sh.S.K.Ray, Advocate, Supreme Court of India on 13.06.2013 for filing the petition. Advocate Mr.Ray was not well for some time due to viral fever and after recovery took some time to draft the petition. He asked to supply the court fee vide his letter dated 09.07.2013 and authorised officer who was to issue the amount of court fees was on leave for some personal problems and court fee amount could be released only on 01.08.2013. Thereafter, the petition was notarized, the paper book was prepared and finally the petition was filed. On

these facts, it is prayed that the delay of 27 days in filing the petition be condoned.

3. The petitioner has also filed an application for condonation of delay in refiling the petition. It is submitted that the petition was filed on 17.08.2013 within the limitation period of ninety days extendable to thirty days. It is submitted in the application for condonation of delay in refiling the petition that after the petition was filed on 17.08.2013, the registry of this court raised several objections and intimated the petitioner that defects were to be cleared within 30 days from the return of defects but later clarified that the defects had to be cleared within 30 days from the date of filing. It is submitted that there arose some delay due to the vacation of Dussehera and the visit of the counsel to his native place (Kolkata) for some urgent family matter. It is submitted that there was a delay in refiling of 24 days which was neither intentional nor deliberate and it is prayed that the delay of 24 days in refiling the petition be also condoned.

4. Both the applications are contested by the respondent. It is

submitted that as per the contention of the petitioner the award was received by the petitioner on 16.04.2013 and since the award amount was not paid by the petitioner even after four months, the award attained finality and become enforceable and the respondent filed Execution Petition No.213/2013. In said execution petition a notice vide order dated 18.09.2013 was issued to the petitioner for 29.10.2013. It was only on 29.10.2013 that the counsel for the petitioner appeared and submitted that they had filed a petition under Section 34 of the Act on 17.08.2013. It is submitted that admittedly the award dated 10.04.2013 was received by petitioner on 16.4.2013 and the period of ninety days for challenging the award under Section 34 of the Act started running w.e.f. 16.04.2013. The present petition under Section 34 of the Act was filed on 17.8.2013 when three months which is extendable to thirty more days as per provisions of Section 34 (3) of the Act had also expired. It is submitted that application for condonation of delay in refilling the present petition is although dated 28.8.2013 but the affidavit supporting it is dated 28.10.2013. It is submitted that if the defects are not removed within

30 days from the original filing date the case has to be treated as being filed fresh and original filing date loses its significance. It is submitted that the petitioner has enlarged the limitation period by doing manipulations. It is submitted that petitioner has not disclosed any reasonable grounds for condonation of delay and both the applications and petition are liable to be dismissed.

5. I have heard the arguments and perused the record.

6. 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:-

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 sub-section (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.

7. The law laid down in the ***Popular Construction Co.’ 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.

8. 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. In case the objections are not filed within 90 days, the same can be filed within next 30 days, showing the reasons for inability to file the objections within 90 days. It is also clear that filing of petition in 30 days to 90 days is not automatic. The petitioner is still required to show reasonable reasons for not being able to file the petition within the prescribed period of 90 days.

9. The contention of the petitioner is that the delay in filing the petition beyond 90 days is administrative. It is submitted that the administrative procedure requires clearance of file at different levels which included seeking opinion of empanelled advocate. The

opinion was received only on 10.06.2013 and some time was lost in approval of the said opinion by the headquarter at Chennai and then their advocate Mr.S.K.Ray of Supreme Court of India had suffered with viral fever and could draft the petition on recovery. Time was also wasted in affixing the court fee since the authorised officer dealing with the court fee was on leave and could release the court fee only on 1.8.2013. Time was also lost in getting the petition notarized and preparation of paper book.

10. For the above reasons which are duly supported by the affidavit, I am satisfied that the petitioner has sufficiently explained its reasons of filing the petition beyond 90 days. I therefore condone the delay of 25 days of initial filing of the petition on 17.8.2013.

11. After the petition was filed on 17.08.2013 certain objections were raised by registry which petitioner had failed to remove within stipulated time. The petitioner therefore has also filed an application for condonation of delay in re-filing the petition. The registry, besides other objections, found that the petition was not in accordance with new format containing four separate parts (i.e. plaint

part, I.A.part, Vakalatnama part and documents part) and hence the petitioner was asked to remove these objections. The objections were raised by the registry on 19.08.2013. The petitioner could not remove all the objections raised by registry, and was able to remove them only on 2.9.2013 and the petition was shown as refiled by the registry on 3.9.2013. Again on 3.9.2013, 13 objections were raised by the registry which are enumerated as under:

- 1. Please insert a para of pecuniary and territorial jurisdiction in the petition/plaint*
- 2. Awarded amount should be mentioned in the plaint and the court fee shall be paid accordingly.*
- 3. Please file a soft copy of complete petition in compact disc (CD). A certificate to the effect, the soft copy filed herewith is a replica of the hard copy filed, be given.*
- 4. Caveat report be obtained and at the time of each subsequent refiling and proof of service be filed.*
- 5. Correction are not allowed in cause title, Index and Memo of parties. All other corrections/addition should be legible and initialised by the Counsel/filing person.*
- 6. Annexures be filed on foolscap and one side of paper.*
- 7. Application for condonation of delay in filing/refiling be filed along with affidavit.*
- 8. Vakalatnama be filed/dated and signed by the counsel and all petitioners. Each advocate must mention their name/address/enrolment number &*

Phone number in Vakalatnama. Title on the Vakalatnama be checked. Welfare stamp be affixed. Signature of the client be identified.

9. Petition be filed properly for scrutiny (master index be filed, pagination not in order)

10. Please mention provisions of law in the I.A.

11. Age be mentioned in affidavit.

12. True copy be made.

13. Fair type of dim documents.

12. The petitioner removed these objections only by 8.11.2013 and the registry had shown the filing date of petition as 12.11.2013. There was therefore 86 days of delay in refiling and not of 24 days as contended by the petitioner. The petitioner has only disclosed the reasons of delay in re-filing of 24 days while the delay in refiling is more than 24 days and no explanation has come forward for delay of whole of 86 days. Moreover the reasons for delay in refiling as shown in application and discussed above are very vague and it cannot be said that the reasons shown sufficiently explain the delay in refiling.

13. In the case 166 (2010) DLT 537 titled as ***Brij Mohan vs. Sunita***, this court while dealing with contention of delay in refiling and discussing the expression “sufficient cause” has clearly held that

the court cannot mechanically condone the delay in refiling the appeal if no reasonable ground is shown at all. In the case 162 (2009) DLT 542 (DB) titled as *Asha Sharma & Ors. vs. Sanimiya Vanijiya P.Ltd. & Ors.*, the division bench of this court has discussed the situation where the appeal was refiled after expiry of 30 days and has observed as under

“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.”

14. In *Asha Sharma*’s case (supra), this court has further observed as under:

“23. It is trite law that Rules of Procedure being hand-mades of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of Procedure are designed to facilitate justice and further its ends.

But, even if we take a rather liberal approach in this matter, we are unable to find any good ground for condonation of delay in filing this appeal. None of the reasons given in the application is convincing or logical.

The impression we gather is that the appellants deliberately delayed filing of the appeal so as to prolong the litigation. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, and howsoever mandatory be the nature of the documents, non-filing of which renders the Appeal defective.

We cannot condone the delay merely because an application for condonation of delay has been filed. No court would like to reject an appeal as time-barred unless there are strong reasons, which compel the court to take such a view. Some indulgence and a liberal view in such matters is well-accepted but to say that the court has no option in the matter and must accept the Memorandum of Appeal irrespective of the nature of the objections and delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.

24. These days we find a growing tendency to file an incomplete Memorandum of Appeal and then take unreasonably long time to remove the defects, even where such defects can be cured within a very short time. Such a practice cannot be said to be conducive to be fair and reasonable and therefore needs to be curbed. An unduly liberal and benevolent approach will only give encouragement to such unfair practices and therefore is

not called for. When an Appeal comes up for hearing long after expiry of the prescribed period of limitation, it springs surprise on opposite party, which assumes finality in his favour on account of non-filing of Appeal within a reasonable period."

15. The division bench of this court in case 2010 (120) DRJ 615 (DB) titled as ***Executive Engineer vs. Shree Ram Construction Co.*** (which judgment has been upheld by the Supreme Court with the dismissal of SLP) in paras 29 and 41 has observed as under:

29. Reliance on the decision in Improvement Trust, Ludhiana -vs- Ujagar Singh, [MANU/SC/0417/2010](#) : (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, [MANU/SC/0613/2001](#) : (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 inextensible by Court under Section 5 of the Limitation Act". This very reasoning has also been clarified and followed in Chief Engineer of BPD/REO, Ranchi -vs- Scoot Wilson Kirpatrick India (P) Ltd., [MANU/SC/8646/2006](#) : (2006) 13 SCC 622 in these words:-

8. The decision in Union of India -vs- Popular Construction Company, [MANU/SC/0613/2001](#) : (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, [MANU/SC/0898/2004](#) : (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.

16. Relying on the findings in ***Shree Ram Construction Co.***' case (supra), the division bench of this court in case 2012 (3) ARBLR349 (Delhi) titled as ***Delhi Transco Ltd. & Anr. Vs. Hythro Engineers Pvt.Ltd.*** has observed as under:

9. 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.

17. From the above discussion, it is apparent that it is for the

petitioner to explain the reasons of delay of each day in re-filing. A casual approach is certainly not tolerable especially when the petitioner is having the advantage of a legal cell to advise him on the legal positions. There is no dispute to the fact that the petitioner is maintaining a legal cell wherein several intelligent minds in this field, render and provide the expert opinions to petitioner. In this background it cannot be presumed that the petitioners were not aware of the stringent law dealing with matter of filing/re-filing of petition under Section 34 of the Act. In this background, it certainly is not expected that a petitioner on re-filing would file it with as many as 13 defects. Some of them are of primary nature like not mentioning the provisions of law on the interim application, asking for fair typing of dim documents, not mentioning of age of the person in the affidavit who had filed the affidavit, not inserting the paragraphs of pecuniary and territorial jurisdiction in the petition, not mentioning the award amount in the plaint and non-payment of the court fee accordingly etc.

18. It is also not expected that the petitioner should take removal

of such defects for so long that is from 17.08.2013 to 12.11.2013. Initially when petition was filed on 17.8.2013, the defects were removed within 30 days that is by 2.9.2013 and petition was re-filed on 3.9.2013. On that day registry raised 13 objections which the petitioner removed only by 8.11.2013 that is after more than 60 days. On these facts the registry has shown the filing date as 12.11.2013. The question is if the objections were not removed within the given time by registry, but is done beyond the period of 30 days of raising the objections in such situation should this refiling be considered as fresh institution? The answer lies in Part G of Delhi High Court Rules which 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.]....

19. It thus empowers the Deputy Registrar, Assistant Registrar, Incharge of the Filing Counter to return the appeal, petition etc. with objections requiring its removal within a time not exceeding 7 days at a time and 30 days in the aggregate. Sub rule (3) specifically and categorically stipulates that if the refiling is done beyond the time allowed under Sub rule 1, it “Shall be considered as fresh institution”. The expression used is ‘Shall’.

20. This court in ***Delhi Transco Ltd.***’s case (supra) has clearly held that such filing shall be considered first filing. Court has observed as under:

11. Moreover, there is no answer with the appellant to the reliance placed by the learned Single Judge on Rule 5, Chapter "I", Part A of Vol.5 of High Court Rules and Orders, according to which, the objections should have been re-filed within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution.

21. In view of the above, it is apparent that the court cannot take leniency in condoning the delay in refiling the petition after removing the objections when objections were removed after 30 days of the filing. The aforesaid rule clearly stipulates that it shall be considered as fresh filing. Even otherwise, the petitioner has miserably failed to explain the delay in refiling. No explanation has come forward except that there were vacations of Dussehra and the counsel had gone to his native village which certainly is not the sufficient ground for condonation of delay under Section 34 of the Act wherein as observed by the Supreme Court of India in ***Popular Construction'***

case (supra), “the endeavour of the court should not be to make the statutory provisions redundant or otiose”.

22. For the reasons discussed above, I find no reason to condone the delay in refiling the petition. Therefore, application for condonation of delay in refiling the petition is hereby dismissed.

O.M.P. 1127/2013 & I.A.No.18443/2013 (for stay)

23. In view of the fact that the petition is barred by limitation, the petition and the pending application are hereby dismissed.

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 10, 2014
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