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

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Date of Decision : 21.02.2024

+ **FAO(OS) (COMM) 28/2024 CM APPL. 10745/2024 CM APPL.
10746/2024 CM APPL. 10747/2024 CM APPL. 10748/2024****UNION OF INDIA**

..... Appellant

Through: Mr. Om Prakash, SPC for UOI with
Mr. Nitish Pande, Ms. Swait Mishra,
Ms. Komal, Advocates

versus

**M/S DISTRIBUTION LOGISTICS INFRASTRUCTURE PVT.
LTD.**

..... Respondent

Through: Mr. Ankit Jain, Mr. Mohit Gupta, Mr.
Vishal Saxena, Ms. Seemab Ali
Fatima and Mr. Dhruv Mehta,
Advocates with Mr. Ajit Thakur, AR**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J.**

1. The appellant has filed the present intra-court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '*the A&C Act*') impugning the order dated 06.11.2023 (hereafter '*the impugned order*') passed by the learned Single Judge in OMP (COMM) No. 452/2023.
2. The appellant had filed the said application under Section 34 of the A&C Act assailing an arbitral award dated 17.05.2021 (hereafter '*the impugned award*'). The appellant's application was dismissed by the learned Single Judge as barred by limitation on account of delay of 755 days in refiling the application. The learned Single Judge had also noted that there



was absolutely no reason stated in the application filed explaining the inordinate delay of 755 days in refiling the application.

3. The appellant had filed the application for setting aside the impugned award [OMP (COMM) 452/2023] on 20.09.2021. The said application was beyond the period of three months stipulated for filing the said application under Section 34 (3) of the A&C Act. It was also beyond the further period of 30 days, which could be condoned in terms of the proviso to Section 34(3) of the A&C Act. However, the said application was within time by virtue of the order passed by the Supreme Court in *Suo Moto* Writ Petition (C) No. 3/2020: *Re: Cognizance for Extension of Limitation*.

4. The application as filed, was defective and the Registry had pointed out as many as 28 (twenty-eight) defects. The application was refiled on 23.02.2022 but it continued to be defective. It was thereafter filed on 03.06.2022 but all the defects were not cured and the application was returned. It was next filed almost a year thereafter on 12.04.2023. But once again all the defects were not cured and was returned. It was successively refiled on 16.10.2023, 21.10.2023, 01.11.2023, 02.11.2023 and was returned on each occasion as all the defects were not cured. It was finally listed before the learned Single Judge on 06.11.2023.

5. The copy of the application filed by the appellant for condoning the delay in refiling has not been filed along with the present appeal. However, the learned counsel appearing for the appellant has handed over hard copies of the applications for condonation of delay in filing and refiling the petition.

6. It is noted that the appellant had filed an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of seven days in



filing the appeal under Section 37 of the A&C Act. This does appear to be an obvious error as the appellant's application was for condonation of delay in filing the petition under Section 34 of the A&C Act and not an appeal under Section 37 of the A&C Act. The reasons stated in the application were in general terms. The appellant claimed that the delay was on account of collecting legible copies of documents, which were filed as annexures along with the impugned award. It does appear that such applications are signed giving reasons in general terms for being liberally used. However, as noted above, this application is not relevant. Though the delay in filing the application under Section 34 of the A&C Act was in excess of 30 days but the period for filing had been extended by the Supreme Court by the orders passed in *Suo Moto* Writ Petition No. 3/2023: *Re: Cognizance for Extension of Limitation*.

7. The appellant's application seeking condonation of delay of 755 days in refileing the application under Section 34 of the A&C Act is dated 13.08.2023 and was supported by an affidavit affirmed on 24.12.2021. It is, thus, apparent that the application was not supported by any affidavit and the appellant had used an earlier affidavit drawn in general terms to support its application. There were no annexures to the said application, yet the accompanying affidavit affirmed that the annexures filed were true copies of their respective originals. This does establish that the affidavit was affirmed without the deponent being aware of the application in support of which it was filed. As noted above, the same was not in existence at the material time.

8. Thus, in fact, the application for condonation of delay in refileing was not supported by a valid affidavit and was liable to be rejected on this



ground alone.

9. The said application does not state any reasons whatsoever for seeking condonation of delay in refiling except stating that “*it took some time to collate documents from the Railway Board*” which were required to file the application. Interestingly, a somewhat similar reason was provided in the application seeking condonation of delay in filing the application under Section 34, as well.

10. The learned counsel appearing for the appellant submitted that notwithstanding the fact that no real or credible reasons were provided for seeking condonation of delay in refiling, the Court is required to adopt a liberal approach considering that the appellant has no remedy against an arbitral award except filing an application under Section 34 of the A&C Act. The said contention is unmerited. A Coordinate Bench of this Court, of which one of us (Vibhu Bhakru, J) was a member, had considered the issue of the delay in refiling in ***Delhi Development Authority vs M/s Durga Construction Co.:2013 SCC OnLine Del 4451***. One of the issues raised in the said case was whether the Court has the power to condone the delay in refiling beyond the period of 30 days after the expiry of three months of receipt of the arbitral award, as stipulated under Section 34(3) of the A&C Act. There were divergent views on the said issue. Whilst one view was that the delay in refiling could not be condoned beyond the outer limit of thirty days after expiry of the stipulated period of three months as stipulated in Section 34(3) of the A&C Act; the other was that Section 34(3) of the A&C Act did limit the power of the court to condone the delay in refiling.

11. This Court held that the delay in refiling was not covered under Section 34(3) of the A&C Act. However, the court also held that given the



legislative intent of strictly confining the period for filing an application under Section 34 of the A&C Act, a liberal approach should not be adopted. Thus, unless the applicant provides sufficient reasons why it was prevented from re-filing the application to set aside the award under Section 34, within the stipulated period, the same was not liable to be condoned. The relevant extract of the decision in *Delhi Development Authority vs M/s Durga Construction Co. (supra)* is set out below:

“21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute.”

12. In the *Executive Engineers v. Shree Ram Construction & Co.: 2010 SCC OnLine Del 3951*, a Coordinate Bench of this Court had observed as under:

“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.”

[emphasis added]

13. It is also relevant to refer to Rule 5 of Chapter 1 of Volume V of the High Court Rules and Orders, which reads as follows:



“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 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.”

14. It is apparent from the plain language of the said Rule that it does not permit condonation of inordinate delay in re-filing the petition. The delay in re-filing beyond the period as permitted is required to be considered as a fresh filing. In ***Government of NCT of Delhi v. M/s. Y.D. Builders & Hotels Pvt. Ltd.: 2017 SCC OnLine Del 6812***, a Co-ordinate Bench of this Court had referred to Rule 5 of Chapter I of Volume V of the Delhi High Court Rules and Orders and held that if a petition is re-filed after the time as permitted, the filing would be considered as a fresh institution and if such filing is beyond thirty days after expiry of three months from the receipt of the award, the delay cannot be condoned. The relevant extract of the said decision is set out below:

“12. Upon reading Rule 5(3), which would apply *mutatis mutandis* to all matters, whether civil or criminal, and would, therefore, apply to a petition under Section 34 of the Arbitration and Conciliation Act, it is evident that in case such a petition is re-filed beyond the time allowed by the Registry under Sub-Rule (1), the filing shall be



considered as a fresh institution. Since the ultimate filing was done on 26.05.2016 and was well beyond the period permitted by the Registry, the filing of the petition under Section 34 would have to be construed as a fresh filing on 26.05.2016. This would mean that not only there was a delay in re-filing but there was a delay in filing of the petition itself which ought to have happened within three months and at the latest within a period of 30 days thereafter, subject to the fulfilment of the conditions laid down under the proviso to Section 34(3) of the said Act. Clearly, the petition, on this ground also, was time barred.”

15. Concededly, in this case, if the said Rule is strictly applied, the Court could have no power to condone the delay as it was beyond the period of 30 days from the date of filing of the application after the expiry of three months from the date of receipt of the award. In *Northern Railway v. Pioneer Publicity Corporation Private Limited: (2017) 11 SCC 234*, the Supreme Court had noted that in that case time extensions were granted beyond the period of seven days and rejected the contention that the filing was required to be considered as a fresh filing. However, the said decision was rendered considering the overall facts of the said case and in the interest of justice as noted in paragraph no. 6 of the said decision.

16. In view of the decision in *Northern Railway v. Pioneer Publicity Corporation Private Limited (Supra)*, a strict view of the said Rule may not be apposite. However, in any view of the matter, such an inordinate delay in refiling without any reason to justify the same cannot be countenanced.

17. The learned counsel for the appellant submits that the delay in refiling is not 755 days as noted by the learned Single Judge but would be approximately 523 days. He submits that by virtue of orders passed by the Supreme Court in *Suo Motu Writ Petition No.3/2023: Re: Cognizance for Extension of Limitation* the delay upto 28.05.2022 (90 days after



28.02.2022) had been condoned. The said contention is unmerited because in the present case, the delay is on account of refiling of a petition that had already been filed in the Court. However, even if we accept the said contention – which we do not – the delay of almost 523 days remains unexplained and we find no ground to fault the decision of the learned Single Judge in not condoning the same.

18. The present appeal has also been filed belatedly. The delay in filing the appeal is four days and delay in refiling is nine days. The reasons for justifying the delay remain the same, that is, non-availability of certain essential documents. It is ironical that such reason has been stated considering that the appellant has not even filed a copy of the application seeking condonation of delay in refiling the application, which was dismissed by the learned Single Judge by the impugned order.

19. In view of the above, the appeal is dismissed.

20. Pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 21, 2024

g.joshi

Click here to check corrigendum, if any