THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

C.R.P.No.1832 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Revision, under Article 227 of the Constitution of India, is preferred against the institution of an Execution Petition before the Court of District Judge, Rangareddy in E.P.No.175 of 2014 in A.C.No.453 of 2011.

The respondent herein invoked the jurisdiction of the sole Arbitrator and, on an award being passed in their favour, filed E.P.No.175 of 2014 for enforcement of the award. The petitioners herein filed a petition before the Delhi High Court under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), along with a petition to condone the delay of 920 days. An additional affidavit dated 08.06.2015 is filed by the 1st petitioner herein stating that the petition filed under Section 34 of the Act before the Delhi High Court was numbered as OMP No.246 of 2015, along with a condone delay petition; the matter was listed, for the first time, on 16.04.2015 before the Delhi High Court; the High Court has requisitioned the record of the Arbitral Tribunal from the learned Arbitrator; and though the matter was subsequently listed on 11.05.2015, it was adjourned to 02.09.2015 due to the strike in the Delhi High Court. The 1st petitioner further states that she was informed by her counsel Mr.Gurpreet Singh, who was representing her in the Delhi High Court, that the matter is duly numbered, though there is a condone delay petition; he also informed her that the High Court had requisitioned the arbitral records from the arbitrator; and that all the arbitration appeals under Section 34 of the Act are numbered as Original Miscellaneous Petitions, and not as Original Petitions as before the Local Courts.

Sri B.Chandrasen Reddy, learned counsel for the petitioners, would submit that the practice in the Delhi High Court is to hear the condone delay application along with the main petition itself; it is only if the court, at the stage of hearing, is satisfied that the delay should be condoned is the main appeal heard on merits; and the very fact that the Delhi High Court had called for the records would justify this Court granting stay of the execution proceedings, as once an application is filed under Section 34 of the Act it operates as an automatic stay of the execution proceedings. Learned counsel would further state that

the award passed by the learned Arbitrator was an *ex parte* award, without notice to the petitioners herein; it was only after the respondents had filed the execution petition, did the petitioners come to know that an award was passed; and, soon thereafter, they invoked the jurisdiction of the Delhi High Court.

On the other hand, Sri G.Kalyan Chakravarthy, learned counsel for the respondent, would draw attention of this Court to Section 34(3) of the Act to submit that an application, for setting aside the award, may not be made after three months have elapsed from the date on which the party making the application had received the arbitral award, or if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal; and, under the proviso thereto, the power of the Court to condone the delay is only for a further period of 30 days after the three months period, and not thereafter. Learned counsel would also place reliance on a Division Bench judgment of the Delhi High Court in ***Décor India P. Ltd.vs. National Building Const. Corpn.***

Section 34 of the Act relates to setting aside the arbitral award and, under Section 34(1), recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3) thereof. Section 36 of the Act relates to enforcement of the award and, thereunder, where the time for making an application, to set aside the arbitral award under Section 34, has expired or such application, having been made, has been refused, the award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court.

An award, under Section 34 of the Act, can only be enforced if no application is filed to set aside the arbitral award, and the time for making such an application has expired or an application, having been made, has been refused. If an application is made, under Section 34 of the Act, to set aside the award within the time stipulated under Section 34(3), the person, in whose favour an award is passed, cannot execute the award during the period when the proceedings, under Section 34 of the Act, are pending. It is only after the application under Section 34 is dismissed, can execution proceedings under Section 36 of the Act be instituted. Where an arbitration application is filed, along with a petition to condone the delay, the moment the condone delay petition is allowed, and the delay is condoned, the application must be held to have been filed within the time stipulated under Section 34, and the execution proceedings cannot be continued thereafter till the said application is finally disposed of. On the other hand, if the condone delay petition is dismissed then there is no application, under Section 34 of the Act, which can said to be pending. In such an event the person, in whose

favour an award is passed, is entitled to execute the award under Section 36 of the Act. It is only for the period when a petition to condone the delay, in filing the application under Section 34 of the Act, is pending consideration of the Court, would the question arise whether the person, in whose favour an award has been passed, can enforce that award.

In ***Décor India P. Ltd.***[1] the question, which fell for consideration before the Division Bench of the Delhi High Court, was whether mere filing of an appeal, against an order passed under Section 34 of the Act, would bar initiation of execution proceedings to enforce the award. This was negatived by the Division Bench of the Delhi Court. In the present case, we are not concerned with an appeal against an order passed under Section 34 of the Act, but with an application filed under Section 34 of the Act along with a petition to condone the delay.

On being asked whether Sri B.Chandrasen Reddy is justified in his submission that the practice in the Delhi High Court is to hear the condone delay petition along with the petition filed under Section 34 of the Act, Sri G.Kalyan Chakravarthy, learned counsel for the respondent, on instructions, would fairly state that it is, indeed, the practice. It cannot be lost sight of that the award, which is now sought to be enforced, was passed *ex parte* and the petitioners herein claim to have been denied the opportunity to contest, the respondent's claim on its merits, before the arbitrator. If the respondent is permitted to proceed with the proceedings, and the delay, in filing the application under Section 34 of the Act, were to be condoned by the Delhi High Court later, the petitioners would be gravely prejudiced thereby. On the other hand, the respondent can always enforce the award later if the petition to condone the delay, in filing the application under Section 34 of the Act, is dismissed by the Delhi High Court. Ends of justice would, therefore, be met if the respondents are directed not to proceed with the Execution Petition till the condone delay petition is heard and decided by the Delhi High Court.

The Civil Revision Petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

15th June 2015

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Date: 15.06.2015

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