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

% Judgment delivered on: 25.08.2015

+ FAO (OS) 173/2015 & CM Nos.6474/2015, 6475/2015

GURBIR KAUR

.... Appellant

versus

B D R BUILDERS & DEVELOPERS PVT LTD.

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Keshav Hegde with Ms Neetu Matella, Advocates.

For the Respondents : Mr Sanjay Goswami, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 22.01.2015 passed by a learned Single Judge of this Court in OMP 253/2014. The said petition was filed under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the ex-parte Award dated 25.02.2011. The learned Single Judge dismissed the said petition on the ground that, since it was filed on 09.02.2014, it was beyond the statutory period of limitation in

terms of the proviso to Section 34 (3) of the said Act and that no convincing explanation for the delay had been furnished.

2. We are unable to agree with the conclusions arrived at by the learned Single Judge. We note that the appellant had, in fact, filed objections under Section 34 of the said Act on 03.02.2012. Unfortunately for the appellant, he had filed those objections in Ex. Pet. No.304/2011, which had been filed by the respondent herein. The execution petition went on for some time. When it was pointed out to the appellant that he should file an independent petition under Section 34 of the said Act, it is thereafter that OMP No.253/2014 was filed by the appellant on 09.02.2014. The learned Single Judge has taken the date of this filing i.e. of OMP No.253/2014 as a date on which the appellant had filed objections under Section 34 of the said Act. However, we feel that the actual date of filing of the objections was 03.02.2012, when the appellant, for the first time, filed objections under Section 34, though in the execution petition filed by the respondent. Therefore, in our view, the period of limitation ought to have seen with reference to the first objections under Section 34 of the said Act which was filed on 03.02.2012 and not with reference to the second objections under Section

34 in the independent OMP 253/2014, which was filed much later.

3. The learned Single Judge has not examined this aspect of the matter. As a result, we find that dismissal of the appellant's petition under Section 34 was not warranted on the ground of limitation.

4. The consequence of this would be that we set aside the impugned order dated 22.01.2015 and remit the matter to the learned Single Judge to consider the objections of the appellant under Section 34 as if the same had been filed on 03.02.2012. If that filing was within the limitation prescribed under Section 34 of the said Act, then the appellant's petition would be within time. The matter is remitted to the learned Single Judge for examining as to whether the petition under Section 34, as filed on 03.02.2012, is within time or not. We may also point out that the objections filed on 03.02.2012 and the OMP 253/2014 are virtually identical. The original objections, which were filed on 03.02.2012, should be independently numbered as an OMP and that OMP should be considered by the learned Single Judge from the stand point of limitation and, if it passes the threshold test of limitation, then on merits. OMP No.253/2014 shall be treated as superfluous and of no consequence. In the first instance, the matter be listed before the learned Single Judge on

28.08.2015.

5. The appeal stands disposed of.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 24, 2015
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