

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

Judgment reserved on April 9, 2015
Judgment delivered on May 18, 2015

+ **CS (OS) No. 3306/2012 & IA 3177/2014**

R.C.GUPTA & BROTHERS Plaintiff

Through: Mr.Udayan Khandelwal, Adv.

Versus

B.S.E.S. RAJDHANI AND ANR. Defendant

Through: Mr.Manish Srivastava with
Mr.Divij Kumar, Mr.Arav
Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

IA 3177/2014 in CS (OS) No. 3306/2012 (under Section 5 of the Limitation Act for condonation of delay)

1. By this order, I shall decide IA 3177/2014 filed under Section 5 of the Limitation Act by the defendant No. 1 BSES Rajdhani ('defendant-applicant' in short) seeking condonation of delay in filing the objections under Section 30 & 33 read with Section 14 & 17 of the Arbitration Act, 1940 as well as CS (OS) No. 3306/2012, for making the award dated September 20, 2010, rule of the Court.

2. It is the case of the defendant/applicant that on the filing of the award, the notice of the proceedings was served upon it on April 26,

2013. On May 29, 2013, the date of hearing, a request was made before the Court to grant some time to file reply and this Court vide its order dated May 29, 2013, had granted four weeks time to the defendant/applicant to file reply and adjourned the matter to August 26, 2013. Immediately thereafter, the counsel appearing for the defendant/applicant sought comments and documents from the defendant/applicant department for preparation of the objections to the award.

3. It is the case of the defendant/applicant that the record as well as the disputes relating to the present case are more than 20 years old, pertaining to the year 1990, and various legal proceedings at various stages were required to be collated from various departments i.e. Enforcement Department, Billing Department, Corporate Department, Legal Department etc. That in the meantime, on August 26, 2013, the matter came up for hearing, the counsel for the defendant/applicant sought time for examination of the matter. The information collated could only be handed over to the counsel on September 9, 2013 for preparation of objections. The draft reply prepared on September 21, 2013 was sent to the department along with the comments, which suggested for some material amendments and certain other documents were sent to the office of the counsel. Necessary changes were effected

on September 27, 2013 and the same was returned to the office of the counsel on September 29, 2013 and the same was filed with the registry of this Court on the same day, which resulted in the delay of 95 days in filing the accompanying objections.

4. The plaintiff/non-applicant filed reply to the application wherein, it was stated that the award was passed by Mr. H.P.Sharma, learned Arbitrator on September 20, 2010. On November 23, 2012, this Court had issued notice to the respondent No. 2 i.e. the learned Sole Arbitrator to file in the Court the original award as well as the entire arbitral record forthwith. This Court received the arbitral record on April 9, 2013, on which date, notice was issued to the defendant/applicant. It is stated by the plaintiff/non-applicant that the defendant/applicant had conceded that the notice was served on the defendant/applicant on April 26, 2013. It also highlighted that the objections were filed on September 29, 2013. The plaintiff/non-applicant would rely upon Article 119 (b) of the Limitation Act which prescribes the limitation for filing objections for setting aside the award as 30 days from the date of service of the notice of the filing of the award.

5. The plaintiff/non-applicant would also state that there is a delay of 126 days in filing the objections by the defendant/applicant. The stand of the plaintiff/non-applicant is also that the defendant/applicant has

failed to furnish any reasonable explanation for the delay in filing the objections.

6. Learned counsel for the defendant/applicant would rely upon the following judgments in support of his contentions, on delay as well as on merit of the award.

(i) Orissa Mining Corporation Ltd. Vs. M/s. Prannath Vishwanath Rawlley, AIR 1977 SC 2014

(ii) M/s. Industrial Development Corporation of Orissa Ltd. Vs. Jajodia Overseas (P) Ltd., AIR 1980 Orissa 66

(iii) Chaudhary Transport & Co. Vs. The Motor General Finance Ltd. & Ors., 108 (2003) Delhi Law Times 654

(iv) Union of India Vs. Delhi School Teachers Assn., 158 (2009) Delhi Law Times 132(DB)

(v) Telefonaktie Bolaget Lm Ericsson (Publ) Vs. Mercury Electronics & Anr., 206 (2014) DLT 423

(vi) Collector, Land Acquisition Anantnag and Another Vs. Mst Katiji and Ors., AIR 1987 SC 1353

7. On the other hand, learned counsel appearing for the plaintiff/non-applicant would rely upon the judgments in the case of *R.B.Ramlingam Vs. R.B.Bhavaneshwari 2009 (2) Scale 108, Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 SC 361, Oriental Aroma Chemical*

Industries Ltd. Vs. Gujarat Industrial Development Corporation, (2010) 5 SCC 459 and Post Master General and Ors. Vs. Living Media India Ltd. & Anr., (2012) 3 SCC 563

8. Having heard the learned counsel for the parties on this application, I note that the notice was received by the defendant/applicant on April 26, 2014. The limitation under Article 119 (b) of the Limitation Act being of 30 days, it is clear that the limitation would start running immediately thereafter. Unfortunately, no objections were filed till May 29, 2013 when time was sought from this Court for filing reply. This Court granted four weeks time to file reply and adjourned the matter. There was no occasion for the defendant/applicant to seek time from the Court for filing the reply which necessary has to be objections. Even if time was sought and granted by this Court, nothing prevented the defendant/applicant to file objections immediately thereafter. The plea that the present case is more than 20 years old and pertains to the year 1990, cannot be accepted as the disputes between the parties were referred to the Arbitrator, who decided the disputes in terms of the award only in the year 2010. In other words, it is not the case where, after the year 1990, the files have to be retrieved for the first time for preparing the objections. The defendant/applicant had filed the reply before the Arbitrator and had contested the claim. All

that was to be done was to refer to the pleadings and the documents filed before the learned Arbitrator and to file objections to the award. This would not have entailed any extra efforts nor was time consuming. Surely, there was no requirement to collate any information and documents. I note, the objections were filed only on September 29, 2013, after more than a month from August 26, 2013. A reading of the contents of the application would not show sufficient cause but rather a lethargicness and without appreciating the urgency in the matter. The contents also reveal lack of bona fide on the part of the defendant/applicant. The law as summarized by the Supreme Court in various judgments on the aspect of limitation is well settled.

9. The reliance placed by the learned counsel for the defendant/applicant on the judgment of this Court in ***Chaudhary Transport & Co. (supra)*** is totally misplaced inasmuch as, the same is not applicable to the facts of this case as the controversy in the said case was with regard to the applicability of Section 5 of the Limitation Act seeking condonation of delay in filing the objections under Section 30 of the Arbitration Act, 1940 and not on the merit, seeking condonation of delay.

10. Insofar as the reliance placed by the learned counsel for the defendant/applicant on the judgment of the Supreme Court in ***Collector,***

Land Acquisition Anantnag and Another (supra) is concerned, in the said case, the Supreme Court, inter alia, was of the view that when an application for condonation of delay is filed by the State Government, treatment, similar to other litigants ought to be accorded and there is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. Insofar as other judgments are concerned, the same do not relate to the issue of condonation of delay, hence are not being considered insofar as this application is concerned.

11. Insofar as the judgment referred to by the counsel for the plaintiff/non-applicant in his reply in the case of ***R.B.Ramlingam (supra)*** is concerned, the Supreme Court has said that in each and every case, the Court has to examine whether delay in filing the petition stand properly explained. It was observed that this is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition.

12. In ***Ram Lal and Ors. (supra)***, the Supreme Court held that it is necessary to emphasise that even after sufficient cause has been shown, a party is not entitled to the condonation of delay as a matter of right. The proof of sufficient cause is a discretionary jurisdiction vested in the Court under Section 5 of the Limitation Act. If sufficient cause is not

proved, nothing further has to be done; the application seeking condonation of delay has to be dismissed on that ground alone.

13. Similarly, the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. (supra)*** has held that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. The law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury.

14. Insofar as the judgment of the Supreme Court in ***Post Master General and Ors. (supra)*** is concerned, it was held by the Supreme Court that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

15. Having considered the submissions by the learned counsel for the parties, suffice to state that when a question for condoning the delay arises, the “sufficient cause” has to be liberally construed and condonation of delay is a matter of discretion of the Court, and acceptance of explanation given should be the rule and refusal the exception. The rules of limitation are not meant to destroy the rights of the parties but to ensure that the parties do not resort to dilatory tactics

but seek their remedy promptly.

16. In an application seeking condonation of delay cogent reasons/facts need to be divulged to form a view of sufficient cause. The plea of condonation of delay has to be with regard to the facts of each case. Even though the Court has discretion, it has to be exercised judiciously. Sufficient cause cannot be liberally interpreted if negligence in action or lack of bona fide is attributed to the party.

17. In the case in hand, the notice of filing of award was received on April 26, 2013. The limitation started immediately thereafter. The defendant/applicant should have filed objections on or before May 25, 2013. I find that on May 26, 2013, the counsel sought time to file reply in other words objections to the award. Even after expiry of more than three months i.e. on August 26, 2013, no objections were filed. The objections could be filed on September 29th 2013. Even though, the defendant/applicant has given some reasons, those, in the given facts in view of the narration above, does not show sufficient cause and bona fide on the part of the defendant/applicant and cannot be accepted. The reasoning seeking condonation of delay was primarily, collating the information from various department. This Court fails to understand the necessity of collating information/documents from various departments when the matter was in arbitration and the award was rendered only in

the year 2010 and the material on which objections could be filed was readily available. The said reasoning does not appeal to this Court.

18. In view of the discussion above, this Court is of the view that reasoning given by the defendant/applicant, not being bona fide, the condonation of delay of 95/126 days is without any merit. The present application needs to be dismissed. It is ordered accordingly.

19. Consequently, the objections filed by the defendant/applicant are also dismissed.

CS (OS) No. 3306/2012

20. The award dated September 20, 2010 of the learned Sole Arbitrator is made Rule of the Court. The decree sheet be drawn accordingly.

(V.KAMESWAR RAO)
JUDGE

MAY 18, 2015/akb