

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

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Judgment Reserved on: 20th March, 2015
Judgment Delivered on: 26th March, 2015

+ FAO(OS) 19/2015 & CM No. 581/2015

M/S MAGNUM BUILDERS & DEVELOPERSAppellant

versus

**UOI THROUGH THE MANAGING DIRECTOR, IRCON
INTERNATIONAL LTD AND ANR.Respondents**

Advocates who appeared in this case:

For the Petitioner: Mr Arun Kumar Varma, Ms Sahiti Kachroo and Mr Mayank Sapra, Advocates.

For the Respondents: Mr K.R.Gupta and Ms Saroj Endlaw, Advocates

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellant has filed the present appeal impugning the judgment dated 17.11.2014. The application seeking condonation of delay of 92 days in re-filing the Objection Petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the said "Act") has been dismissed by the learned Single Judge by the

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impugned order and consequently the Objection Petition has also been dismissed.

2. The award was published on 07.06.2013. It is an admitted position that a copy of the award was received by the appellant on 12.06.2013. The Objection Petition was initially filed within the statutory period of 90 days on 09.09.2013. The Objection Petition was returned by the Registry on 10.09.2013, pointing certain defects in the petition, with a direction to the appellant to re-file the same within one week. The Objection Petition was not re-filed within seven days but, was re-filed on 10.12.2013, which was again returned on account of certain defects on 12.12.2013. It was finally re-filed on 13.12.2013.

3. The Appellant filed the Objection Petition with an application seeking condonation of delay. The ground raised by the appellant in the application seeking condonation of delay in re-filing was as under:

“2. That the abovementioned petition was filed on 09.09.2013 but certain defects were found, and the said petition was to be re-filed after removal of the objections.

3. That on 04.10.2013 it was discovered that the said file was missing from the office and the staff was unable to recover the file.

4. That on 01.12.2013, it was discovered that the file had been mistakenly mixed up with another set of

files of a different forum, resulting in this confusion.”

4. The reason stated by the appellant in the application seeking condonation of delay is that on 4.10.2013 it was discovered that the filed had been missing from the office and the staff was unable to trace the file and it was only on 01.12.2013 that it was discovered that the file had been mistakenly mixed up with another set of files of a different forum.

5. Learned Single Judge has found that the appellant has failed to satisfactorily explain the delay in re-filing the petition. No sufficient cause was shown and thus the application seeking condonation of delay has been dismissed.

6. The only contention raised by the learned counsel for the appellant before us is that the appellant was not made aware by his counsel who was handling the matter about the Objection Petition being returned by the Registry and the delay in re-filing of the objections and as such the appellant should not be penalised for the fault of the counsel.

7. The Objection Petition was returned under objections on 10.09.2013 notifying certain defects, with a direction to the appellant to re-file the same within one week. The same was re-filed in the first instance on 10.12.2013. The ground taken is that the file was missing. Even if it were to be assumed that it was discovered on 4.10.2013 that

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the file was missing, there is no explanation forthcoming in the said application as to why steps were not taken to re-file the Petition within one week of 10.09.2013. There is further no explanation as to what steps were taken by the appellant between 04.10.2013 when it was allegedly discovered that the file was missing till 01.12.2013 when the file was allegedly found. Even after 01.12.2013, nine days were taken in re-filing the petition which was filed on 10.12.2013.

8. It is settled that the time limits laid down by the Act have to be strictly followed. The delay in filing the Objection Petition under section 34 of the Act cannot be condoned. However a slightly liberal approach has to be adopted with regard to the delay in re-filing. Even when a liberal approach has to be followed, the condonation is not for the asking and the petitioner has to show that the petitioner was diligent in all respects and the circumstances were beyond the control of the petitioner and there is no inordinate delay. The applicant has to show that the applicant was diligent and not lacking in any respect or negligent. Stricter scrutiny has to be carried out of the cause that prevented the applicant from re-filing the objections to ascertain whether the same is sufficient cause or not. By a liberal interpretation of sufficient cause, the party cannot be permitted to circumvent the statutory period prescribed by law.

9. The appellant has tried to shift the blame to the earlier counsel. In our view, the appellant cannot shift the blame to the counsel

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entirely, if at all. The appellant has failed to show as to what steps, the appellant had taken after the objection petition was originally filed on 09.09.2013 in finding out from his counsel about the fate of his petition. The appellant cannot be permitted to take benefit by blaming his earlier counsel. Since time limits prescribed by the act have to be strictly followed, the appellant cannot be permitted a larger period merely because his counsel allegedly did not inform him about the objections or the delay in re-filing.

10. We also do not find that the appellant has shown any sufficient cause, entitling the appellant to seek condonation of delay in re-filing. We find no infirmity in the impugned judgment. In view of the above, the appeal is dismissed with no orders as to costs.

SANJEEV SACHDEVA, J.

MARCH 26, 2015
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BADAR DURREZ AHMED, J.