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

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Judgment delivered on: 28.07.2015

+ **FAO (OS) 379/2015 & CM No.12479/2015 (stay)**

M/S NATIONAL HIGHWAYS AUTHORITY OF INDIA Appellant

versus

HINDUSTAN CONSTRUCTION CO LTD

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Trans Juris, Mr Rajiv Kapoor and
Mr Anil Kumar, Advocates.

For the Respondent : Mr Dayan Krishnan, Senior Advocate with
Ms Malavika Lal, 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 14.05.2015 passed by the learned Single Judge of this Court in IA No.2283/2014 in OMP No.152/2014. The said IA No.2283/2014 was an application seeking condonation of delay in re-filing the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the said Act") challenging the award dated 12.08.2013. The relevant paragraphs of the said application are reproduced hereinbelow:-

“1. That this petition was filed on 11-11-2013 then was re-filed on 22-11-2013. However, it was again put under objection by the registry and was then re-filed on 30-11-2013, where-after the registry had again put the same under objections due to various reasons including defective CD, which was taking long time to be cured.

2. That the said petition was re-filed on 17-12-2013, which was again put under objection on 18-12-2013. However, when the counsel went to collect the file under objection, it was found to be misplaced in the registrar (sic) somewhere.

3. That after thorough search by the staff therein, the said file was traced out by them and was returned to the counsel on 18-1-2014 and is, being re-filed within time now.

Hence the delay in re-filing from 18-12-2013 to 18-1-2014 and finally on 25-1-2014 amounting to 37 days may kindly be condoned as the same was beyond the control of the counsel and inadvertent due to the reason mentioned above.

Prayed accordingly.” (underlining added)

2. As pointed out by the learned Single Judge, the only explanation sought to be given for the delay in re-filing the petition under Section 34 was that the Registry had misplaced the file between 18.12.2013 and 18.01.2014. The learned Single Judge had called for a report from the Registry. The report of the Registrar (O), supported by the copies of the relevant pages of the concerned register, was examined by the learned Single Judge and he came to the definite conclusion that the file remained at the Return Counter between

19.12.2013 and 09.01.2014, when it was collected by the counsel for the petitioner and remained with him till 25.01.2014, on which date the same was re-filed. The learned Single Judge came to the conclusion that the record falsified the explanation offered by the appellant for the delay in re-filing the petition under Section 34 of the said Act.

3. Since the learned counsel for the appellant was insistent that the file had not been taken back on 09.01.2014, as indicated in the report of the Registrar (O), in order to ascertain the true facts, we called for the actual register where returns of the petitions/applications are recorded. On going through the 'Return Register', we find that the conclusions arrived at by the learned Single Judge are absolutely correct. The learned counsel for the appellant also accepts the position after detailed examination of the Return Register in Court before us.

4. That being the position, there is no infirmity in the order passed by the learned Single Judge. The explanation offered by the appellant has been found to be false and untrue. In these circumstances, the question of condoning the delay does not at all arise. This Court in the case of **Delhi Development Authority v/s M/s Durga Construction Company : 2013 (139) DRJ 133(DB)** while holding that the Court had jurisdiction to condone delay in re-filing the petition under Section 34 of the said Act also held that the jurisdiction was not

to be exercised liberally and that the applicant would have to satisfy the Court that it had pursued the matter diligently and that the delay was beyond his control and was unavoidable. The Division Bench, *inter alia*, held as under:-

“25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred.”

5. The facts of the present case do not indicate that the appellant was diligently pursuing the matter and that the delays were beyond the appellant's control or were unavoidable. What is worse is that an entirely false explanation had been put forth which was contrary to the record. There is a delay of 50 days beyond the time specified in Section 34(3) of the said Act. The said delay cannot be condoned in the circumstances narrated above.

6. We find no infirmity in the decision of the learned Single Judge. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 28, 2015

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