

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

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Judgment Reserved on: 07th August, 2015
Judgment Delivered on: 01st September, 2015

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FAO(OS) 436/2015

NORTHERN RAILWAY

.... Appellant

versus

**M/S PIONEER PUBLICITY CORPORATION
PVT LTD & ANR**

..... Respondents

Advocates who appeared in this case:

For the Appellant:

Mr Jagjit Singh with Mr Shivanshu Bajpai.

For the Respondents:

Ms Manmeet Arora and Ms Mansi Sharma

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. By this appeal, the appellant impugns the order dated 18.05.2015 passed by the learned single judge, whereby the application of the appellant for condonation of delay of 65 days in re-filing the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') has been dismissed. The learned Single Judge by the impugned order held that the

explanation for delay of nearly two months in re-filing is not satisfactory.

2. The Award that is challenged by way of Section 34 petition was pronounced by the sole Arbitrator on 29.10.2009. A copy thereof was made available to the parties on the same date. Objections under Section 34 were filed on 23.01.2013. The three months period, as prescribed under Section 34 (3) of the Act, ended on 29.01.2013. The petition filed under Section 34 was scrutinized by the Registry on 23.01.2013 and was returned under objections for being re-filed within a period of seven days. The court fees required to be paid on the Section 34 petition was 1% of the awarded amount, i.e., approximately over Rs.8 lakhs. The court fees affixed on the Section 34 petition was only Rs 500/- and the petition was filed on 23.01.2013. The petition which was returned under objections on 23.01.2013 was re-filed on 21.02.2013. It may be noted that the additional period of thirty days permissible under proviso to section 34(3) expired on 26.02.2013.

3. The petition which had been re-filed on 21.02.2013 was once again defective and was returned by the Registry for being re-filed for removal of objections. The petition was thereafter re-filed on 22.03.2013. The petition re-filed on 22.03.2013 was still not free from defects and was once again returned by the Registry. The same was repeatedly re-filed without removing the defects on 17.04.2013,

25.04.2013 and 27.04.2013 and finally on 01.05.2013 after removing all defects. The petition was listed before the Court on 03.05.2013.

4. The appellant did not file an application seeking condonation of delay in re-filing with the petition. However, in terms of the order dated 03.05.2013, an opportunity was granted to the appellant to file an application seeking condonation of delay in re-filing. The application seeking condonation of delay in re-filing gives the following explanation:-

- “7. That at the time of filing the objection the court fees of Rs.500/ was annexed with the petition, because earlier there used court fee of Rs 20/ for filing objections against the award. While taking decision for filing the objections no amount of court fees was sanctioned and due to shortage of time.
8. That the Registry after filing of the aforesaid petition had raised objections that the petitioner/applicant should mention the awarded amount in the objection and court fee be affixed accordingly as relevant rules.
9. That accordingly the Petitioner/Applicant through Counsel added the valuation in the objection Petition by calculating the same and requested the officials of the Railways to arrange the court fee.
10. That the award has been given by the Arbitrator is almost about 9 Crore. The huge amount of court fees was to be paid. The Counsel for the Petitioner/Applicant accordingly informed the

officials of Railways that more than Rs.8,92,000/- amount of court fees was required to be affixed and they should get the sanction for said amount and pay to the Counsel so that requisite court fees be applied and affixed to the Petition.

11. That a cheque dated 04/02/2013 of Rs.8,94,179/- was received in the office of counsel and same was deposited in the bank on 08/02/2013, but due to incorrect spelling in the name the same was returned by the concerned bank. Copy of the cheque is enclosed. As the cheque was returned by the Bank the same was returned to the concerned office of the Petitioner.
12. After the said cheque was returned it took time to prepare a new cheque for making a new cheque being a Govt. Department, finally a new cheque dated 27/02/2013 for an amount of Rs.8,94,179/- was prepared and handed over to the Counsel. The said cheque dated 27.02.2013 was received by the counsel for the petitioner/applicant in the first week of March, 2013 towards court fees. Copy of the cheque dated 27.02.2013 for Rs.8,94,179/- is enclosed. The said cheque was deposited in the account of the counsel for the Petitioner. The said cheque was encashed and thereafter, the counsel for the applicant paid the requisite amount to the concerned agency, which gives e-court fees in the Hon'ble High Court. The said court fee was received on 15.03.2013.
13. That in the meanwhile, since court fee was not received most of the objections were removed. After the court fee was received the petition was re-filed the Registry on 21.03.2013 after removing

all the objections. However some other objection was raised, for attestation of further court fees and additional court fees was paid and objection was removed and again re-filed.

14. That in the meanwhile, the High Court Rules were amended and notification was issued that a soft copy of the petition is filed with the hard copy in regard the arbitration cases. It was a new notification it took some time to understand the system of preparing and filing of the soft copy and then it came to notice that some agency in the filing counter is also preparing and giving soft copy of the petition and therefore entire petition was handed over to the agency for preparing it in soft copy. This took some time and finally the some new objection was removed and the petition was re-filed on 17.04.2013, 25.04.2013, 27.04.2013 and finally 01.05.2013. The Registry gave a certificate stating that the soft copy/CD has been given as per rules and then on 30.04.2013, the Registry reported that another objection that caveat has been filed by respondent on 03.03.2013 therefore copy of petition be supplied to the Respondent.”

5. The respondent in the reply to the application seeking condonation of delay in re-filing, has contended as under:-

- “2. The Petitioner/Applicant has been wilfully negligent in filing the petition and having the same listed. The present application evidences the negligence inasmuch as the Petitioner/Applicant fails to even disclose the exact days in respect whereof condonation has been prayed for. As per Rule 5, Chapter I, Part A, Volume 5 of the High

Court Rules and Orders (hereinafter referred to as the 'High Court Rules'), the objections have to be re-filed within a time not exceeding seven (7) days at a time, and thirty (30) days in aggregate to be fixed by the Deputy Registrar or the Assistant Registrar, Incharge of the Filing Counter. Rule 5(3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar or the Assistant Registrar. In-charge of the Filing Counter, it shall be considered fresh institution. In the present case it is a matter of record that (1) the Petitioner/Applicant exceeded the aggregate period of 30 days permissible for re-filing and (2) the Petitioner/Applicant re-filed the petition beyond the period specified by the Filing Counter. The relevant dates in this regard are as under:-

<u>SI No.</u>	<u>Date of filing</u>	<u>Delay</u>
1.	23.01.2013	First filed on this date, within 90 days from date of award dated 29.10.2012.
2.	23.01.2013	It was scrutinized by the registry out the same date, defects were listed out and the Applicant was directed to re-file within a week i.e. seven (7) days. Seven days expired on 30.01.2013.
3.	27.01.2013	Statutory period of 90 days to file objections under section 34 of the Act of 1996 expired.
4.	21.02.2013	This petition was re-filed after 29 days. This is clearly beyond the specified period of seven (7) days specified by the Filing Counter.
5.	26.02.2013	This problem continued to remain

		defective and was returned to the Petitioner
6.	22.03.2013	Additional period of 30 days permissible under the statute i.e. section 34 of the Act of 1996 Expired.
7.	17.04.2013	The Petitioner/Applicant re-filed the objections on this date (after 25 days). The Petition continued to remain in defect. The Registry pointed out the defects and recorded that the petition be re-filed in a week (i.e. seven days) The Caveat or was served on this date.
8.	30.04.2013	The Petitioner/Applicant, however, re-filed defective petition on this date i.e. after twelve (12) days. The registry returned the petition for removal of defects.
9.	01.05.2013	The Petitioner/Applicant removed the defects and re-filed on this date.
10.	02.05.2013	The Registry found the petition in order and listed the petition before the Hon'ble Court.
11.	03.05.2013	The matter was listed before the Hon'ble Court.

6. The learned Single Judge, after noticing the dates of filing and re-filing, held that the explanation for delay of nearly two months in re-filing rendered by the appellant is not satisfactory. The learned Single Judge held that there is no explanation as to why despite the

amendment to the Court Fee Statute having taken place in July 2008 itself, the petition was filed on 23.01.2013, in the first place, without the requisite court fees. The learned Single Judge relying on the decision in **Ashok Kumar Parmar v. D.C.Sankiila : 1995 RLR 85** held that non-filing of the court fees is a substantive defect which renders the filing itself *non est*. Besides that, the learned Single Judge found that there was no explanation as to why it would take a month to deposit the requisite court fees and nearly two months to cure the defects and re-file the petition. As regards the delay in re-filing between March and April, the learned Single Judge has noticed that the explanation offered is that a practice direction was issued by this Court requiring a soft copy of the petition to be filed and this took some time. The learned Single Judge did not find the explanation satisfactory and held that preparation of a soft copy of the petition, by no stretch of imagination, could take as long as thirty days. The learned Single Judge noticed that more than two years had passed by which an opportunity was granted to the appellant to file an application seeking condonation of delay. Thereafter, on 27.10.2014, a detailed order was passed by the Court and there was sufficient time available to the petitioner to give satisfactory explanation for the delay. However, the Court noticed that no satisfactory explanation for the delay has been rendered. The learned Single Judge also relied on the decision of a Division Bench of this Court in **DDA v. Durga Construction Company : 2014 RLJ 490 (Del)**, whereby this Court

held that the delay in re-filing was different from the delay in filing of a petition and Court would be slightly more liberal in allowing the condonation of delay in re-filing, however, the condonation of delay in re-filing was not for the asking and the Court would have to be satisfied that the applicant was diligent in pursuing the matter and the delay was unavoidable and for bona fide reasons.

7. We find no infirmity with the view taken by the learned Single Judge in not condoning the delay. It is noticed that the petition was originally filed without the requisite court fees. Even an application seeking enlargement of time for filing the requisite court fees was not filed. The only explanation given is that the matter was filed in a rush without the requisite court fees. It may be noticed that despite the fact that the matter was filed in a rush, the court fees was not filed for over a period of one month from the date of filing. The explanation tendered is that the amount was substantial and as such it took some time in the amount being credited into the account of the counsel and then being credited to the account of the Stock Holding Corporation for the purposes of obtaining the court fees. The appellant should have been diligent in obtaining and filing the requisite court fees. Merely because a substantial amount was required to be paid as court fees, cannot be a ground to circumvent the statutory provision of limitation.

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8. In arbitration matters, the limitation has to be strictly construed and the parties cannot be permitted to frustrate the very purpose of the Act. Even after the court fee was paid, the appellant took over thirty days in removing the defects. Merely because a soft copy was required would not take the appellant over thirty days in preparation of a soft copy. The appellant re-filed the petition repeatedly without curing the defects. We are in agreement with the view taken by the learned Single Judge that the appellant has not been diligent in pursuing the petition and has taken substantial time in removal of the defects. No satisfactory explanation has been forthcoming for the condonation of delay of 66 days in re-filing the petition. The appellant has not been diligent enough and as such, cannot claim benefits of the law as laid down in the *Durga Construction* (*supra*). We find no infirmity with the view taken by the learned Single Judge.

9. In view of the above, we find no merit in the appeal. The appeal is accordingly dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J.

September 01, 2015
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BADAR DURREZ AHMED, J.