

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

% *Judgment reserved on: 1st March, 2016*
Judgment pronounced on 15th March, 2016

+ **O.M.P. No.218/2015, I.A. Nos.5235/2015 & 13089/2015**

UNION OF INDIA Petitioner
Through Ms.Mayuri Raghuvanshi, Adv. with
Mr.Jagdeep Kr. Sharma, Adv.

versus

NAGARJUNA CONSTRUCTION CO. LTD. Respondent
Through Ms.Priya Kumar, Adv. with
Mr.Adhish Srivastava & Ms.Tanya
Tiwari, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the abovementioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for setting aside award dated 8th September, 2014 passed by sole Arbitrator.
2. Copy of the Award dated 8th September, 2014 was received by petitioner on 11th September, 2014.
3. The three month period of limitation for challenging the arbitral Award under Section 34 of the Act lapsed on 12th December, 2014.
4. The petitioner filed the petition under Section 34 of the Act on 17th December, 2014.

5. The delay of 9 days in filing the petition which was within the 30 days proviso as provided in Section 34(3) of the Act was condoned by this Court vide order dated 13th March, 2015.
6. First time the objections under Section 34 of the Act were filed on 17th December, 2014. The Registry raised certain objections and petition under Section 34 of the Act was returned on 18th December, 2014. 24th December, 2014 was the last working day of the Court. The Registry re-opened for filing on 3rd January, 2015. The Court re-opened after vacation on 5th January, 2015. The petitioner re-filed the petition on 6th January, 2015 after a delay of 18 days (including the period of vacation since re-filing was not done on the first day of reopening). Thereafter, upon checking the petition was again returned in defect on the same day.
7. Therefore, the main petition was re-filed after a delay of 6 days i.e. on 19th January, 2015, thus, taking total number of days of delay to 24 days. It was returned with objection on 19th January, 2015.
8. In the meanwhile, the respondent sent a letter of demand on 20th January, 2015 to the petitioner requesting release of the payment of the award along with future interest.
9. The petitioner on 28th January, 2015 served the copy of petition to counsel for respondent for the first time, which was one of the defects not removed from the petition since December, 2014 and the same was filed again on the same day i.e. 28th January, 2015 after a delay of 1 day, found in defect and returned. Thus, the total delay upto 28th January, 2015 was of 25 days.

10. On 29th January, 2015, the petitioner replied to letter dated 20th January, 2015 of the respondent informing that it had filed a petition challenging the Award dated 8th September, 2014.

11. It has been noticed that many times the petition was returned in view of defects and re-filed, however finally on 10th March, 2015, all the objections were removed and the petition was listed before the Court on 13th March, 2015.

12. As the objection for condonation of delay did not contain the full details, the petitioner by order dated 13th March, 2015 was allowed to file the detailed affidavit disclosing the events of the delay occurred on behalf of the petitioner.

13. She submits that as there is delay of more than 30 days in refilling after removing the objections, therefore, it is fresh filing and in case of such situation, the petition becomes time barred. The delay hence is not condonable as per the decision of Supreme Court in the case of ***Union of India v. M/s Popular Construction Co.*** (2001) 8 SCC 470.

14. It is argued by her that since the objections are time barred, this Court many times have followed the decision of ***Popular Construction*** (supra) wherein it has been held that the intention of the legislature to provide a definite and inelastic period of limitation will be defeated if parties are allowed to delayed listing of the petition by delaying its re-filing. A stricter scrutiny, both for the reasons that prevented the party as also the number of days, is to be adopted to give effect to statutory provisions of Section 34. Reliance is placed on ***Union of India v. Sunrise Enterprises, Panipat***, 187(2012) DLT 244, (paras 12-13).

15. Counsel for the respondent has referred to the following decisions in support of her submissions

- i.) *The Food Corporation of India v. Pratap Rice and General Mills*, 2014 IV AD (Delhi) 773 has held that delay in re-filing has been recognized as a cause for delay which is most commonly prevalent and the explanations in this context are more often than not false contrived or at least demonstrate that the party had been negligent. These factors do not qualify as sufficient cause for condoning a delay, especially in the context of the strict timelines provided by Section 34.
- ii.) In *Delhi Development Authority v. M/s Durga Construction Co.* 2013 (139) DRJ 133, the Division Bench of this Court in paras 17, 18, 21 & 24 has held as under :-

“17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in *Ashok Kumar Parmar v. D.C. Sankhla*, 1995 RLR 85, whereby a Single Judge of this Court held as under:

“Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.”

A Division Bench of this Court upheld the aforesaid view in *D.C. Sankhla v. Ashok Kumar Parmar*, 1995 (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:

“5..... In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act.”

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a

given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.

21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in *Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman*, 2011 (2) R.A.J. 347 (Del) has held as under:

“9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in refiling are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refiling the petition.”

24. The respondent has also relied upon the order of the Supreme Court dated 22.07.2013 dismissing Special Leave Petition No. 9175-9176/2011 in *India Tourism Development Corp. Ltd. v. R.S. Avtar Singh & Co.* The above Special Leave Petitions arose from the judgment order dated 10.02.2011 in

FAO No. 58/2011 and CM No. 2252/2011 which in turn had relied upon the judgment in *The Executive Engineers v. Shree Ram Construction & Co.* (supra). As the Special Leave Petitions against the decision in *The Executive Engineers v. Shree Ram Construction & Co.* (supra) had been dismissed, an application was moved for dismissal of the said Special Leave Petitions. The Supreme Court allowed the application and dismissed the Special Leave Petitions. The said order also cannot be read to hold that a court does not have the jurisdiction to condone delay in re-filing of an application under section 34 of the Act, beyond the period of three months and thirty days, where the initial filing was within the time as specified under section 34(3) of the Act.”

16. Counsel for the respondent has argued that the petitioner has neither made effort to give any explanation for the delay in re-filing nor sufficient cause was shown, despite an opportunity was being granted by this Court in the interest of justice. The petitioner has failed to offer any reason for the delay in re-filing which is more than one month.

17. Lastly, it is argued on behalf of the respondent that as the petitioner failed to satisfy the Court in showing the sufficient cause, the application for condonation of delay is liable to be dismissed. Consequently, the main petition under Section 34 of the Act would also be dismissed.

18. The relevant Sub-section (3) of Section 34 reads as under:

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application

within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

19. A mere reading of Section 34(3) of the Act would show that the period of limitation is prescribed with respect to making an application for setting aside an award and if the objections are filed after three months, the period of limitation can only be extended upto the period of 30 days subject to the condition that if a party would be able to satisfy the Courts that it was prevented by sufficient cause, otherwise, delay is not to be condoned. In any case after expiry of 30 days after the statutory period of three months, the delay of even one day cannot be condoned if the objections are not filed within three months or along with an application for condonation of delay of 30 days as provided under Section 34(3) of the Act, as it was rightly held in the case of ***Popular Construction*** (supra) that in the arbitration matters, the limitation is to be strictly construed and there is not an iota of doubt that otherwise the very same purpose would be frustrated if the delay after extended period is condoned.

20. One of the main problems available in large number of cases wherein the objections are filed within the period of three months or along with application for condonation of delay within the extended period of thirty days, if there is a delay in re-filing is that no time is prescribed for condoning the delay occurred in re-filing after removing the objection(s) raised by the Registry from time to time under Section 34(3) of the Act.

21. As per the Delhi High Court Rules, Section 5 of Chapter 1 (Volume V) at page 10, a petition presented to the Registry and returned in objection

is to be re-filed within a period of seven days. If filed beyond 7 days, it is taken as a 'fresh filing' and as per the High Court Rules, delays in re-filing can be condoned up to a maximum period of 30 days.

22. All the objections raised by the Registry were supposed to be removed within thirty days as per rules otherwise, it would become fresh filing. As per the Act, the period for filing objection under Section 34 of the Act is restricted to 3 months. The power of the Court to condone the delay has been restricted to a period of 30 days and not any further. This discretion conferred on the Court is also qualified by the requirement of the applicant satisfying the court that there was 'sufficient cause' which prevented the applicant from filing the petition in time.

23. Having considered the objections of the respondent and the reply submissions made by the learned counsel for the petitioner and additional affidavit, let me now discuss the issue in hand.

24. In view of the order dated 13th March, 2015, the petitioner has filed the affidavit of Mr. Paras Ram working as Executive Engineer, Building Project Division, B-132, Public Works Department, Delhi who is conversant with the facts of the case and is competent to swear the present affidavit.

25. Prior to filing of the affidavit, the Court condoned the delay of 9 days in the filing of objections after the expiry of period of 3 months.

26. Admittedly, the date of award is 8th September, 2014. It was received by the petitioner on 11th September, 2014. The present petition was filed in the Registry of this Court for the first time on 17th December, 2014. It was returned by the Registry after raising *inter alia* the following objections on 18th December, 2014 :

- a. petition was not by limitation
- b. provision of law be given in the heading of the application
- c. Annexures were not in proper format;

27. After 5 days of the receipt of the petition, this Court was closed for vacations and the Counsel for the petitioner and his clerk went out of town. The Court opened after the break on 5th January, 2015 and on 6th January, 2015 the counsel for the petitioner removed the defects and once again filed the petition. It is submitted in the affidavit that the delay was on account of winter break in this Court. It is also submitted that counsel could not procure better copies of the annexures from the department in the interregnum and therefore, the defects in respect of the annexures were not completely removed.

28. On 6th January, 2015 the Registry in addition to earlier objections on annexures raised some fresh objections. The said are as under:

- a. petition/applications/Annexure/order/
 - i. power of attorney/index should be stamped;
- b. petition/applications/Annexure/order/
 - i. power of attorney/index should be signed and dated;
- c. corrections are not allowed in cause title, index and memo parties. All corrections/addition should be legible and initialised.

29. On 19th January, 2015 the counsel for the petitioner re-filed the petition after removing the defects pointed out on 6th January, 2015.

However, on the same day the petition was returned as defective while raising fresh objections as follows:

- a. application for condonation of delay in re-filing be filed along with the affidavit
- b. petition/suit/application be split in 2 volumes with maximum of 200 pages in one volume with separate index. The impugned order be filed in the 1st volume.

30. On 28th January, 2015 the counsel for the petitioner re-filed the petition after removing the defects raised on 19th January, 2015. However, fresh objections were raised on 28th January, 2015 which were as follows:

- a. fresh notice of motion upon counsel concerned being filed in 3 days have elapsed since the date of last service.
- b. separate index for each part being filed.
- c. affidavit be filed in support petition/appeal/application and attested/identified. Parental details/age/complete address be given. Necessary averments be given since the affidavit has been signed in vernacular. No modification is allowed. It should be retyped and attested.
- d. Corrections (any) are not allowed because title, index, memo parties. All corrections/addition should be legible and initialised by counsel/filing person.

31. On 3rd February, 2015, the counsel for the petitioner once again filed the petition, which was checked by the Registry and returned to the counsel

for the petitioner on 5th February, 2015 with objections. The petition was re-filed by the counsel for petitioner on 10th February, 2015, but the same was once again returned with objections. It appears from the record that the Registry kept on raising the objections/ defects in addition to the objections raised at the first instant.

32. It is stated in the affidavit that the defects raised by the Registry were with reference to the documents filed as annexures and it took some time for the petitioner to get better copies and collate the voluminous record of the case.

33. The Supreme Court in *State of Nagaland vs. Lipok AO and Ors*, AIR 2005 SC 2191, had held that the expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. It was further held therein that in litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest.

34. It is submitted in the affidavit that the delay in re-filing has occurred without any deliberate fault and the petitioner has a good *prima facie* case on merit and grave prejudice and irreparable loss would be caused to the petitioners in the event of delay in re-filing the present petition, if not condoned by this Court.

35. In the present case, there is an important fact which has come to notice of the Court that the Registry has kept raising the fresh defects/objections in each re-filing. It might have happened due to the strict compliance of amendment of the Act. But, it is always appropriate that the Registry should always raise all possible objections after the first filing itself. It appears that the matters get delayed in re-filing, if the Registry after every re-filing raised additional objections other than the objections already raised in the last re-filing which were removed. Under these circumstances, thirty days period expires before the last re-filing. In the present case, same peculiar situation has arisen and the delay of more than 30 days has occurred after the first filing, otherwise, there may not have been any delay, had all the objections been raised by the Registry at the first instant itself. Irrespective of the aforesaid reasons and additional affidavit which contains the sufficient cause in order to condone the delay, the Court is satisfied.

36. I am of the view that the Registry should raise all possible objections on the first filing itself. If fresh/ new objections are raised, one week period has to be given to remove the same. Thus, the delay in re-filing in the present case is condoned by allowing the application.

37. List the matter for 17th May, 2016 for preliminary hearing of the matter on merits.

(MANMOHAN SINGH)
JUDGE

MARCH 15, 2016