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

\+ **O.M.P. 71/2006**

NRI FINANCIAL SERVICES LTD. & ORS. ..... Petitioners

Through: Mr. Sanjay Kumar Pathak, Advocate. (M:9910770311)

versus

SHRI MUKESH KUMAR & ORS. ..... Respondents

Through: Mr. Aman Mehta, Advocate. (M:9818023754)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 12.11.2018

<u>O.A. 141/2018 in O.M.P. 71/2006</u>

1. This is an appeal filed against the order dated 4th September, 2018 by which the learned Joint Registrar dismissed the Petitioner's application seeking condonation of delay in disclosing the details of movable and immovable assets, in the present OMP 71/2006.

2. Brief background is that the present OMP has been preferred challenging award dated 3rd December, 1997. Initially, the Petitioners filed a civil suit Suit No.18A/1998 under the Arbitration and Conciliation Act, 1940 by filing objections to the said award. The objections, which were filed were registered as the present OMP, under Section 34 of the Arbitration and Conciliation Act, 1996.

3. The present OMP 71/2006 was initially considered by the Court and certain offers were made by the Petitioners to settle the matter, as is evident from a reading of order dated 3rd November, 2015. However, no settlement thereafter fructified. On 2nd November, 2016, the OMP was dismissed for

non-prosecution. The Respondent in the meantime, filed Execution proceedings.

4. An application was moved being I.A. No.14984/2016 by the Petitioners seeking restoration of the present OMP. Vide order dated 21st March, 2017, the proceedings in the execution petition being 35/2007 were considered by the Court. In the said execution, an order was passed on 1st October, 2012 directing the Petitioners to disclose the details of their movable and immovable assets along with the updated statement of all the bank accounts for the last three years. In view of the said order passed in the execution petition, the Court, on 21st March, 2017, directed as under:

> "*1. It is pointed out by learned counsel for the Respondent that Execution Petition No. 35 of 2007 filed by the Respondent was disposed of pending the disposal of OMP 71 of 2006 which was dismissed in default and the restoration of which is sought in the present application. In that execution petition, an order had been passed on 1st October 2012 directing the Petitioner to disclose on affidavit the details of both its movable and immovable assets, together with the updated statements of all its bank accounts for the last three years.*
> *2. The Court would like the Petitioners to first comply with the above requirement in order to demonstrate their bonafides about pursuing the OMP 71 of 2006.*
> *3. Each of the Petitioners will, accordingly, first file an affidavit within a period of four weeks from today disclosing the details of all their assets, both moveable and immoveable, and enclose therewith the updated statements of all their bank accounts for the last three years. …………………………"*

5. The Petitioners, however, did not comply to the said order. An application was moved being I.A. No.14932/2017 seeking recall of order dated 21st March, 2017. The said application was also disposed of on 18th

May, 2018 in the following terms.

> "....................
> *In my opinion, no prejudice would be caused to the petitioner in case he files the affidavit disclosing its movable and immovable assets. These details are necessary keeping in view the long time gap that has taken place since the award has passed on account of the pendency of the present petition. For the time being, the petitioner need not file details of the bank, accounts as they may not be necessary at this stage.*
> *Subject to the petitioner filing on record the details of its movable and immovable assts within six weeks from today, the present petition and LA. No. 5177/2015 stand restored to their original position.*
> *In view of the above, both the applications are disposed of."*

6. Thus, vide this order the Court reiterated the direction to disclose the details of moveable and immoveable assets but exempted at that stage the filing of the details of bank accounts. Despite the same, the Petitioners did not comply with the order. The Petitioners challenged the order dated 18th May, 2018 by way of FAO (OS) 231/2017. On 22nd August, 2017, the said appeal was dismissed. A review petition along with an application for condonation was filed being, I.A.11221/2017 and review petition 401/2017. Delay in filing the review petition was condoned and on 15th January, 2018 the review petition was dismissed by this Court.

7. On 15th May, 2018, the Court adjourned the matter as the Petitioners had made a submission that they had filed an appeal challenging the order dismissing the review petition. On 3rd July, 2018, it has been recorded that FAO (OS) 103/2018 has also been dismissed. Thus, on 3rd July, 2018, following order was passed.

"The counsel for the Respondents submits that today the appeal preferred by the Petitioner FAO(OS) 103/2018 has been dismissed by the learned Division Bench. It is further submitted that the Petitioners have not complied with the order dated 21st March, 2017 and have repeatedly sought indulgence of this Court.

A perusal of the order sheet reveals that on 21st March, 2017, each of the Petitioners were directed to file an affidavit disclosing the details of all their assets, both moveable and immoveable as also their bank statements for the last three years. On 18th May, 2017, the said order was modified and the Petitioners were directed to bring on record the details of movable and immovable assets within six weeks. Despite lapse of so much time, the Petitioners have not complied with the said order. The Petitioners are avoiding compliance on one pretext or the other. The Petitioner No.3, who appears in person, submits that since the appeal has been dismissed today, the matter may be adjourned by a month and thereafter he would consider what steps to take. Even today, the Petitioner is not willing to comply with the earlier orders of this Court.

Under these circumstances, no further time deserves to be granted to the Petitioners.

The petition is dismissed. I.A. No. 11221/2017 is also disposed of.

If and when the Petitioners file any application, the same shall be considered in accordance with law. File is consigned to record room."

8. The petition, was thus dismissed and was not restored due to serious non-compliance by the Petitioners.

9. Strangely, I.A.11796/2018 has been moved by the Petitioners seeking condonation of delay in filing the affidavit of compliance in respect of movable and immovable assets and also the bank statements – but without attaching the affidavit disclosing the movable and immovable properties.

The said application was considered by the Joint Registrar on 4th September, 2018 and was dismissed due to the delay of 421 days, which was totally unexplained. Further, the Joint Registrar records that even in the said application, the compliance affidavit has not been filed. Present appeal has been preferred assailing the order dated 4th September, 2018.

10. Learned counsel appearing for Mr. I. D. Kansal submits that the Petitioner used to prosecute the present OMP in person and in view of the fact that he did not have legal advice, he committed errors. He deserves to be given an opportunity for the OMP being heard on merits.

11. The Court has perused the appeal filed by the Petitioners. It seems that for the first time alongwith the present appeal, an affidavit of Mr. Kansal has been filed disclosing the movable and immovable assets. A perusal of the appeal will show that there is no reason given, whatsoever, for the delay in continued non-compliance of the repeated orders by this Court. The Petitioners have not only been in complete non-compliance but have violated the orders passed by this Court with severe impunity. Under these circumstances, the order of the Joint Registrar cannot be faulted with as there is no reason given, whatsoever, for the delay and the delay is not liable to be condoned. The appeal is dismissed. Considering the conduct of the Petitioners in this entire litigation, the Petitioners are directed to pay costs of Rs.50,000/- to the Respondents in addition to the earlier costs, which have been imposed upon the Petitioners.

12. O.A. is dismissed.

PRATHIBA M. SINGH, J.

NOVEMBER 12, 2018/*dk*