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

Date of Decision: August 08, 2016

+ **FAO 104/2016 & C.M.No.8233/2016**

M/S NATIONAL PROJECT CONSTRUCTION CORPORATION
LTD Appellant

Through: Mr. Anup J. Bhambhani, Senior
Advocate, with Mr. Rajat Arora,
Advocate

versus

M/S S S SHARMA & CO Respondent

Through: Mr. B. M. Sehgal and Mr. Arjinder
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 4th January, 2016 dismisses appellant's objections under Section 34 of *the Arbitration and Conciliation Act, 1996* as time barred. It is evident from the impugned order that against an Award of 15th October, 2003, appellant had filed the objections in the Godhra Court in Gujarat within period of limitation. However, those objections were not entertained due to lack of territorial jurisdiction vide order of 10th December, 2008. Photocopy of certified copy of order of 10th December, 2008 has been placed on record alongwith short synopsis

by learned counsel for respondent and its perusal reveals that the objections filed by appellant before the Godhra courts were directed to be returned back to appellant by following the procedure under Order 7 Rule 10-A (2) of CPC. It is a matter of record that after a period of 16 months, appellant had filed an application under Order 7 Rule 10-A of CPC to fix the date of appearance in the court where the plaint is to be filed after its return. The said application stands allowed by the Godhra court vide order of 30th April, 2010 (Annexure A-6). The parties were directed to appear before the concerned court in Delhi on 30th June, 2010. Appellant had filed the objections before the Delhi court on 2nd July, 2010.

Trial court vide impugned order has dismissed appellant's objections under Section 34 of *the Arbitration and Conciliation Act, 1996* by considering the aspect of the objections being within limitation or not. While giving the benefit of Section 14 of *the Limitation Act*, trial court has concluded that appellant's objections under Section 34 of *the Arbitration and Conciliation Act, 1996* are barred by 579 days.

The challenge to the impugned order by learned senior counsel for appellant is on the ground that it was not open to the trial court to have considered as to whether the objections under Section 34 of *the Arbitration and Conciliation Act, 1996* are within limitation or not because as per the order of 30th April, 2010, the parties were directed to appear before the concerned in Delhi on 30th June, 2010 and said order was passed on the 'No Objection' given by learned counsel for respondent herein and, so the plea of limitation qua the filing of the objections under Section 34 of *the Arbitration and Conciliation Act, 1996* could not have been reopened and thus, the impugned order deserves to

be set aside and appellant's objections under Section 34 of *the Arbitration and Conciliation Act, 1996* ought to be tried in accordance with law.

On the other hand, learned counsel for respondents vehemently supports the impugned order and submits that it meticulously considers the delay aspect while relying upon various decisions and that the trial court has rightly concluded that the inordinate delay of 579 days has not been explained at all. It is asserted by learned counsel for respondents that even after the order of 30th April, 2010, appellant was duty bound to file the objections within 30 days, which was not done and objections were filed on 2nd July, 2010 and even this delay remains unexplained and, so this appeal deserves to be dismissed as there is no illegality in the impugned order.

Upon considering the submissions advanced by both the sides and on perusal of the impugned order and the trial court record, I find that objections under Section 34 of *the Arbitration and Conciliation Act, 1996* have been filed within time, may be in a wrong Forum, but that by itself does not give the right to the competent court to dismiss those objections on the ground of delay, particularly when appellant's application under Order 7 Rule 10-A of CPC has been allowed and that too, on the 'No Objection' given by the respondent herein.

This Court has no hesitation in concluding that trial court has misdirected itself to go into the question of limitation qua the objections under Section 34 of *The Arbitration and Conciliation Act, 1996* as it was not open to it to do so. Such a view is being taken because the application under Order 7 Rule 10-A of CPC was allowed without any objection from the opposite side. The delay in filing the application under Order 7 Rule

10-A of CPC could have been considered by the Godhra courts, while allowing the application. The court of competent territorial jurisdiction i.e. the trial court, could not have gone into this aspect. It is being so said because in the order of 10th December, 2008, appellant-plaintiff was directed to follow the procedure as per the Order 7 Rule 10-A (2) of CPC i.e. the procedure prescribed for fixing a date of appearance before the court of competent territorial jurisdiction. Pertinently, the Godhra court vide order of 30th April, 2010 had fixed the date of appearance of the parties before the court of competent territorial jurisdiction i.e. the trial court here as 30th June, 2010. In such a situation, it is not open for the respondent to contend that the appellant ought to have filed the objections within 30 days of passing of the aforesaid order of 30th April, 2010.

When vide aforesaid order, the parties have been directed to appear before the Principal District Judge, Patiala House Courts, New Delhi, then appellant was at liberty to file the objections on the said date. It is not in dispute that 30th June, 2010 was a district court holiday and, so filing of the objections on 2nd July, 2010 cannot be said to be such a violation which justifies outright rejection of appellant's objection under Section 34 of *the Arbitration and Conciliation Act, 1996* without contest. The delay of one day, in the facts and circumstances of this case, stands condoned while holding that the objections under Section 34 of *the Arbitration and Conciliation Act, 1996* filed by the appellant to be well within limitation.

Consequently, the impugned order is hereby set aside and trial court is directed to decide the appellant's objections under Section 34 of *the Arbitration and Conciliation Act, 1996* as per law with promptitude.

Let the parties through their counsel appear before the trial court on 22nd August, 2016 for proceeding further in accordance with the law.

With aforesaid directions, this appeal and the application are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

AUGUST 08, 2016

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