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

+ **FAO 41/2012 & C.M. Nos.1432-1433/2012 (for delay)**

DIRECTOR GENERAL OF SUPPLIES & DISPOSAL

..... Appellant

Through: Mr. Pradeep Chandra, proxy counsel.

versus

BEATTY CHEMICALS

..... Respondent

Through: Mr. Shiv Khorana, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **22.03.2016**

1. This is an appeal filed by the appellant under Section 39 of the Indian Arbitration Act, 1940 against the order dated 8.12.2010 by virtue of which the objections of the appellant against the award dated 19.1.2010 were dismissed.

2. The learned arbitrator had passed an award in favour of the respondent for a sum of Rs.1,86,561/- along with interest @ 9 per cent per annum. The appeal was filed which came up for hearing for the first time on 24.1.2012 and since then, it is pending before this court. A request for adjournment is made on behalf of Mr. S.C. Sati, the learned counsel for the appellant on the ground that his father is not well. Normally a request of this nature would have been allowed; however, keeping in view the facts recorded in the previous order sheets, I am not inclined to adjourn the matter. A perusal of the order

sheets show that the counsel representing the appellant has never made any sincere effort to address the court right from February, 2013 when the respondent put in appearance for the first time. The appellant's counsel has made a request for adjournment on 17.2.2016, 29.9.2015, 13.7.2015 and 24.4.2015 consistently for four consecutive dates before the date fixed for today. Even prior to that also, a request for adjournment was made on behalf of the appellant's counsel, though he was represented by another counsel.

3. Apart from the aforesaid disability with which the request of the appellant suffers, there is an application along with the appeal filed under Section 5 of the Limitation Act bearing C.M. No.1432/2012 wherein there is a delay of 68 days in filing the appeal and yet another application under Section 151 CPC bearing C.M. No.1433/2012 seeking condonation of 208 days delay in re-filing the appeal.

4. There is no dispute about the fact that once objections are raised by the Registry, re-filing has to be done by the counsel or by the party concerned within a maximum period of 30 days from the date of collection but once the delay occurs even in re-filing beyond 30 days then it is to be treated as initial delay in filing the appeal. Both these applications, seeking condonation of delay under Section 5 of the Limitation Act as well as the application under Section 151 CPC seeking condonation of delay in re-filing does not give any sufficient reason for condoning both these delay which is a requirement under Section 5 of the Limitation Act.

5. Therefore, keeping in view all these facts, I am not inclined to accommodate the proxy counsel for the appellant by adjourning the matter. The appeal is held to be barred by time as the delay is not condoned. Accordingly, the appeal is dismissed. The amount which has been deposited by the appellant shall be released to the respondent forthwith.

V.K. SHALI, J.

MARCH 22, 2016
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