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

+ **FAO(OS) 78/2016 & CM APPL.8992-8993/2016**

UNITED INDIA INSURANCE CO LTD Appellant
Through: **Mr.A.K. De & Mr. Zahid Ali, Advocates**

versus

MANISH KUMAR GUPTA Respondent
Through: **Mr. Sanjeev Singh, Advocate**

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% 11.07.2016

The present appeal has been filed against the order dated 10.09.2014 passed by a learned Single Judge in OMP No.1127/2013 which was a petition under Section 34 of Arbitration and Conciliation Act, 1996. Two objections faced the appellant: one was the delay in filing the petition and the other was the delay in re-filing the petition beyond the period of 120 days stipulated in Section 34 (3) of the said Act. Insofar as the first period of delay is concerned, that is, with regard to the filing of the petition beyond the period of three months but within the period of 120 days, the learned Single Judge by virtue of the impugned order dated 10.09.2014 had agreed with the appellant and had condoned the delay. However, with regard to the delay in re-filing, the learned Single Judge, on facts, did not think it to be case fit for condonation of delay as sufficient cause, according to the learned Single Judge, has not been shown for the delay. As a result, the petition (OMP No.1127/2013) was dismissed on this ground by virtue of the order dated 10.09.2014.

Being aggrieved, the petitioner preferred an appeal being FAO (OS) 461/2014. By an order dated 10.11.2014, the Division Bench permitted the appellant to file an appropriate application before the learned Single Judge but at the same time the appeal as such was dismissed as withdrawn. The order passed by the Division Bench on 10.11.2014 reads as under:

“CM 18263/2014

Exemption allowed subject to just exceptions.

FAO(OS) 461/2014

1. Learned counsel for the appellant submits that the issue concerning different objections being put at different points of time by the Registry resulting in delay in refiling which was argued before the learned Single Judge does not find a mention in the impugned order. Counsel prays that the appellant be permitted to withdraw the appeal reserving appellants right to file an appropriate application before the learned Single Judge pointing out that this aspect of the matter, which was argued and in respect whereof written submissions have been filed, has not been dealt with by the learned Single Judge.

2. Granting liberty to the appellant to file an appropriate application before the learned Single Judge concerning the order dated September 10, 2014 the appeal is dismissed as withdrawn.

CM 18262/2014 (stay)

Dismissed as infructuous.”

Subsequent to the liberty granted by the Division Bench, the appellant filed a review petition before the learned Single Judge being RP No.558/2014. The learned Single Judge, by virtue of a detailed order, dismissed the review petition on 25.05.2016. The appellant filed an appeal being FAO (OS) 468/2015 against the said judgment dated 25.05.2015. The said appeal was taken up for hearing by a Division Bench of this Court on 17.02.2016, on which date it observed that no appeal would be maintainable against an order passed in a review petition and that the only remedy available to the appellant was to have challenged the main order. The learned counsel for the appellant had conceded that the said appeal was not maintainable against an order passed in a review petition. The Division Bench by virtue of its order dated 17.02.2016 however observed that if the appellant would file an appeal against the order dated 10.09.2014, the same would be decided in accordance with law.

The appellant thereafter filed the present appeal being FAO (OS) 78/2016 against the original order dated 10.09.2014. The learned counsel for the respondent raised an objection that the present appeal would also not be maintainable. The objection raised by the learned counsel for the respondent is based on a decision of Division Bench in **Neelam Arya vs. Din Mohd. (Deceased) & Ors.: 199 (2013) DLT 568 (DB)**. In that

decision an order dated 26.02.2009 passed by a learned Single Judge has been assailed by the appellant therein by way of a letters patent appeal. That appeal was withdrawn by the appellant therein with liberty to file a review petition. In terms of the leave granted, the appellant therein filed a review petition which was dismissed by the learned Single Judge by virtue of a detailed speaking order. The appellant thereafter filed another letters patent appeal challenging the original order as well as the order passed in the review petition.

The Division Bench observed that as far as the original order was concerned, the same had been challenged by the appellant in the first letters patent appeal which came to be withdrawn. It also noted that admittedly, the appellant therein, while withdrawing the said first letters patent appeal had not sought any permission from the court to file a fresh appeal against the original order in case the review petition which the appellant had proposed to file came to be dismissed. The Division Bench noted that having dismissed the appeal without any liberty to file a fresh appeal in the event of the appellant therein not succeeding in the review, the second letters patent appeal to the extent it assailed the original order was not maintainable.

The very same situation arises in the present case. While withdrawing the earlier appeal being FAO (OS) 461/2014, the appellant had not sought any liberty to file a subsequent appeal against the order dated 10.09.2014, in the event the review petition which was proposed to be filed by the appellant was dismissed by the learned Single Judge. That being the case, the present appeal being against the very same order dated 10.09.2014 would not be maintainable. Consequently, the appeal is dismissed.

BADAR DURREZ AHMED, J

JULY 11, 2016
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V. KAMESWAR RAO, J