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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 28/2014 & IA. No.293/2014

PADMAKAR

..... Petitioner

Through: Mr. Nath Mohan for Mr. Anagha S.
Desai, Advocate.

versus

PVG SECURITIES PVT. LTD. & ANR.

..... Respondents

Through: Mr. N.P. Sahni, Advocate for
Respondent No.1.

Mr. Sanjay Bhatt, Advocate for Respondent No.2.

CORAM: JUSTICE S. MURALIDHAR

ORDER

26.10.2016

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1. A preliminary objection is raised by the Respondents as regards the present petition not having been filed within time.
2. The Appellate Arbitral Award in the present case is dated 30th August 2011. It is stated that a copy of the said Award was made available to the parties on 10th September 2011.
3. In terms of Section 34 (3) of the Arbitration and Conciliation Act, 1996 ('Act') a petition challenging the Award has to be filed within 90 days from the date of receipt of the Award. In other words, it had to be filed on or before 9th December 2011.

4. In the first instance, the Petitioner filed a petition on 9th December 2011 in the High Court of Judicature at Bombay. It was, therefore, filed within a period of three months in terms of Section 34(3) of the Act. However, by an order dated 18th June 2013, the High Court accepted the plea of the Respondents that the said Court lacked the territorial jurisdiction to entertain the petition. The petition and notice of motion was directed to be returned to the Petitioner for presentation before the appropriate Court. A specific direction was issued to the Petitioner “to file this petition with Notice of Motion within four weeks from today”. The above direction was given by the Bombay High Court conscious of proviso to Section 34 (3) of the Act which permits a petition to be filed within a further period of 30 days after the expiry of 90 days in terms of Section 34(3) of the Act provided the Court is satisfied that the Applicant was prevented by sufficient cause for making the said application within a period of three months.

5. The abovementioned order of the Bombay High Court having been passed in the presence of learned counsel for the Petitioner was, therefore, in the knowledge of the Petitioner. The four weeks period computed from the date of the said order, i.e. 18th June 2013 would come to an end on 17th July 2013.

6. The present petition was initially filed as a Transfer Petition instead of an OMP on 16th July 2013 and on scrutiny was returned with objections. It was again re-filed as a Transfer Petition on 26th August 2013 and returned with objections to be filed as an OMP. Finally the OMP in its present form was filed only on 5th September 2013, i.e. far beyond the above period granted

by the High Court of Bombay. Strangely at the time of filing of the petition on 6th September 2013, the Petitioner did not also file an application for condonation of delay. Instead in para 34 it is asserted that the petition is within limitation. After mentioning the order dated 18th June 2013 passed by the High Court of Bombay, the Petitioner simply states that it “promptly filed the matter before the Hon’ble High Court of Judicature at Delhi. Thus is well within limitation of Arbitration.” The above statement is obviously incorrect. The Petitioner offered no explanation why it could not file the petition within the period of four weeks granted by the High Court of Bombay by its order dated 18th June 2013.

7. Learned counsel for the Petitioner urged that the Court should put the Petitioner to terms and condone the delay in filing the petition. The Court cannot possibly accept the above plea. In terms of the proviso to Section 34 (3) of the Act the Court is precluded from entertaining an application which is not filed within a further period of 30 days after the expiry of 90 days. The words used at the end of the proviso are: “but not thereafter”. The question, therefore, of the Court accepting the plea of the Petitioner and entertaining the present petition, which has been filed well within the period of 120 days from the date of receipt of the Award, even excluding the time during which the earlier petition was pending before the High Court of Bombay, does not arise.

8. As already noted, no application has been filed by the Petitioner for condoning the delay in filing the main petition. Only an application for condonation of delay in re-filing the petition has been filed. Considering that

the main petition is itself barred by limitation, there is no need to consider the application for condonation of delay in re-filing the petition.

9. For the aforementioned reasons, the petition is dismissed on the ground of delay.

S. MURALIDHAR, J

OCTOBER 26, 2016
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