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

+ **FAO 226/2016 & C.M. No.18784/2016 (for delay)**

HDFC BANK LTD Appellant

Through: Mr. Satish Mishra, Advocate

versus

ROHIT ANAND & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **17.05.2016**

1. This is an appeal filed under Section 37 of the Arbitration & Conciliation Act against the order dated 28.5.2014 passed by the learned Additional District Judge-02, South West District, Dwarka, New Delhi setting aside the award dated 21.3.2011 holding that the arbitral proceedings are bad in law and do not have any force in law as the objector/applicant did not get proper notice regarding the appointment of an arbitrator.

2. The present appeal has been filed by the appellant along with an application filed under Section 5 of the Limitation Act seeking condonation of delay of 622 days in filing the appeal. It has been stated in the application that the impugned order was passed on 28.5.2014 and the appellant handed over a certified copy of the same to its advocate Mr. Gorang Gupta for the purpose of filing an appeal. The said appeal was filed on 5.3.2015 vide diary No.113631. It has been stated that no information was received from the counsel or from other sources that the appeal was lying under objection. It is stated

that subsequently, the appeal papers were collected by the counsel in the month of March, 2016 and handed back to the appellant for the purpose of removing the objections and re-filing the appeal. It was at that stage, that the counsel is stated to have been changed though it has not been averred and the appeal has been filed. This has resulted in 622 days delay in filing the appeal.

3. The objections have to be filed under Section 34 of the Arbitration & Conciliation Act within a period of three months which period can be extended by another 30 days meaning thereby that a party aggrieved by an award has to file objections within a maximum period of 120 days. Although no time limit has been fixed for the purpose of filing an appeal in such cases against Section 37 of the Arbitration & Conciliation Act but it can be safely presumed to be at best 120 days. In the present case, the impugned order was passed by the learned ADJ on 28.5.2014 setting aside the award, the appellant collected the copy of the same day and handed it over to the counsel while as the miscellaneous appeal was filed on 5.3.2015, that is, after expiry of almost ten months which clearly shows gross negligence on the part of the appellant bank. Even after filing of the appeal, no sincere effort seems to have been made by the appellant to check with the counsel as to whether the appeal has been cleared by the Registry and as to when it was listed. The appellant again went into slumber for almost a year and it is only in March, 2016 that the appeal was collected and taken by the appellant for the purpose of removal of the objections. If such is the conduct of the appellant, certainly it does not deserve to be condoned because such a conduct is nothing but indolent and grossly negligent.

4. The application seeking condonation of delay is so sketchy and

ill-drafted and that it does not even use the word 'sufficient cause' for the purpose of condonation nor has it been stated that the delay was caused on account of reasons beyond human control which is the interpretation to the word 'sufficient cause'. I feel that by condoning the delay, the court could be putting premium on gross negligence and indolent behaviour of the appellant. Accordingly, the present application seeking condonation of delay is dismissed and the appeal is held to be barred by time.

V.K. SHALI, J.

MAY 17, 2016
'AA'