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

Date of Decision: August 31, 2016

+ **FAO 163/2015**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Mini Pushkarna, Standing
Counsel with Mr. Satyavir, AE &
Mr. Salim, AE, SDMC

versus

SATISH BUILDERS Respondent

Through: Mr. Avinash Trivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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C.M.No. 31864/2016 (u/S 151 CPC)

By way of this application, appellant seeks permission to place on record affidavit in terms of the last order.

Notice.

Mr. Avinash Trivedi, Advocate, accepts notice on behalf of respondent.

Upon hearing, the application is allowed and the affidavit is taken on record.

The application is disposed of.

FAO 163/2015 & C.M.No. 9195/2015 (u/S 151 CPC)

Impugned order of 8th January, 2015, dismisses objections under Section 34 of *The Arbitration and Conciliation Act, 1996* as time barred while noting that filing of the objections initially was beyond the period of limitation and the order of this Court of 1st February, 2012 permitting appellants to file the objections before the trial court within fifteen days has also not been complied with.

Learned counsel for appellant-Objector assails the impugned order on the ground that trial court has erroneously calculated 15 days from 1st February, 2012 i.e. the date of order of this Court, although the objections were returned to appellant by the Registry of this Court on 5th March, 2012 and the said objections were filed before the trial court on 15th March, 2012 and were thus, in time. It is pointed out that the objections were filed before this Court by way of O.M.P. 683/2011 along with application seeking condonation of delay in filing as well as further delay of 31 days in re-filing and trial court has erred in not dealing with the application for delay in filing and re-filing, although these applications were re-filed before the trial court.

Attention of this Court is drawn to appellant's affidavit of 22nd August, 2016 to point out that the Registry was contacted on the very next day i.e. on 2nd February, 2012 for returning of the objections but the objections were returned on 5th March, 2012. Thus, it is submitted that 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 heard on merits.

Learned counsel for respondent supports the impugned order and

submits that the objections were filed before this Court in OMP 683/2011 beyond the period of 90 days i.e. 18 days later, and there was delay of 31 days in re-filing as well. It is pointed out that the objections were filed in this Court on 4th June, 2011 and the affidavit supporting it is of 2nd July, 2011 and this shows that the initial filing of objections was not with the requisite affidavit. It is submitted that there is a noting of the Registry in OMP 683/2011 that the objections were ready for being returned on 23rd February, 2012 and these objections were taken back on 5th March, 2012 whereas the stipulated time of 15 days ended on 10th March, 2012 and so, the filing of objections on 15th March, 2012 is also beyond time. Thus, it is submitted that this appeal deserves rejection.

After having heard learned counsel for the parties and on perusal of impugned order and the material on record as well as the file of OMP 683/2011, this Court finds that trial court has erred in computing the period of 15 days from the date of the order of this Court till the re-filing of the objections before the trial court on 15th March, 2012. The order of 1st February, 2012 of this Court clearly directs the re-filing of objections before the trial court within 15 days from the date of return and not from the date of the order of this Court. A bare perusal of the aforesaid OMP file reveals that appellant's earlier counsel had appeared before the Administrative Officer (Judicial) on 28th February, 2012 and had placed on record the photocopy of the OMP file for obtaining the return of the original objections and the application filed.

It is evident from the noting of the Registry that subject to approval, appellant's counsel was to appear before the Assistant Registrar. It appears that appellant's counsel was called upon to appear

before the concerned Assistant Registrar on 5th March, 2012 and on that day, the objections, in original, were returned to appellant's counsel. As such, the stipulated period of 15 days was to commence from 5th March, 2012 and appellant had re-filed the objections on 15th March, 2012 and thus, was within time. Judicial notice can be taken of the fact that in routine, movement of files from the table of Administrative Officer (Judicial) to the table of the Assistant Registrar takes some time.

It is quite evident that trial court has erred in holding that appellant has not complied with the order of 1st February, 2012 of this Court. The observation of the trial court in the impugned order to the effect that there is no explanation for the initial delay in filing of the objections before this Court in OMP, is not borne out from the records as the original filing of the objections was accompanied by an application seeking condonation of delay. The application seeking condonation of delay, which is in the appeal file at page 96, reveals that the delay of 18 days had occurred on account of administrative process requiring movement of file from one table to another.

Trial court has erred in holding that no sufficient cause exists for condoning the delay. No doubt, no premium can be placed on the bureaucratic approach adopted in appellant's department in dealing with such like matters, but the delay occasioned does not appear to be deliberate or intentional and so, trial court ought to have condoned the delay while putting appellant to terms. Trial court has erred in not doing so.

The stand of the respondent of supporting affidavit being filed after a time gap does not assume importance for the reason that there was a re-

filing of the objections and once re-filing is allowed, then filing of supporting affidavit at a later date is of no consequence.

In view of aforesaid, the impugned order is set aside while allowing the application for condonation of delay of 18 days in initial filing of the objections, subject to costs of ₹10,000/-. The objections filed by the appellant are now required to be dealt with on merits by the trial court in accordance with law.

With aforesaid directions, this appeal and the application are disposed of.

AUGUST 31, 2016
r/s



(SUNIL GAUR)
JUDGE