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

+ **FAO(OS) (COMM) 79/2016 & CM Nos.33707-33708/2016**

M/S YASH PROMOTERS AND BUILDERS PVT LTD Appellant

Through: Mr R.K. Sahni, Advocate

versus

SATYAWATI SHARMA

..... Respondent

**Through: Ms Ruchir Mishra with Mr Mukesh
Kumar Tiwari, Advocates**

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% 16.09.2016

The present appeal has been filed against the judgment dated 01.08.2016 whereby the appellant's petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 26.09.2014 was rejected on the ground that it was beyond the stipulated period prescribed under Section 34(3). There was a delay of 169 days in re-filing the said petition.

The learned Single Judge has examined the circumstances with regard to the delay and the re-filing of the petition on 29.07.2015 in paragraph 5 of the impugned judgment. The said paragraph is reproduced hereinbelow:-

“5. It is averred in the reply that the petition after filing the objection on 4th October, 2014, the same was re-filed again on 13th January, 2015 with the note that objections have been removed and the case may be posted for hearing however, in the application the petitioner had stated that he removed some objections and re-filed the petition on 13th January, 2015, therefore, the stand taken by the petitioner is self contrary. It is also stated that the petitioner had incorrectly stated in the application that the present application was misplaced by the clerk of the counsel and despite diligence it could not be traced and for that reason objection could not be removed in time and that in the last week of May, 2015 the petitioner, by good fortune, could lay their hands on

the original papers and re-filed the petition on 12th May, 2015 with remarks that all objections were removed. The said averments are not a sufficient ground to condone the delay and baseless as the petitioner has only removed part of the objections, though recorded at the time of filing of the petition that all objections have been removed. From the explanation given by the petitioner for the first re-filing of the petition that only some objections were removed therefore, explanation given by the petitioner cannot be believed. Even the second re-filing of the petition on 12th May, 2015, it was contended on behalf of the respondent that though the petitioner had alleged in the application that the file got misplaced and could not be traced and it was only in the last week of May, 2015 the counsel for the petitioner could lay their hands over the original file. This explanation is totally false as, if the file was located in the last week of May 2015 then how the second re-filing could be done in the 2nd week of May 2015 i.e. on 12th May, 2015 as alleged in the application. However, the petitioner has concealed in the application that the present case was re-filed in the month of July, 2015 also, as it is a matter of record that the present petition was re-filed on 29th July, 2015. The respondent had also filed sheet of the petition and case history as downloaded from the website of this Court which has been marked as Annexure R-1 Colly.”

We have heard the learned counsel for the parties. We see no reason to interfere with the decision of the learned Single Judge as no plausible explanation has been offered for the delay of 169 days in re-filing. That being the case, the petition under Section 34 was rightly not entertained as being barred by limitation.

The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

SEPTEMBER 16, 2016/ns