

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

% **Judgment reserved on: 29th July, 2016**
Judgment pronounced on: 1st August, 2016

+ **I.A. No.15439/2015 in O.M.P. 414/2015**

YASH PROMOTERS & BUILDERS PVT LTD Petitioner
Through Mr.Sahil Sharma, Adv. with
Mr.Santosh Mishra, Adv.

versus

SATYAWATI SHARMA Respondent
Through Mr.Ruchir Mishra, Adv. with
Mr.Mukesh Kr. Tiwari, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the impugned award dated 26th September, 2014 passed by the Sole Arbitrator.
2. The said petition was first time filed in the Registry on 3rd January, 2015.
3. The above mentioned application was filed on behalf of the petitioner under Section 151 CPC for condonation of delay of 169 days in re-filing the petition. The objections although were filed in time as it is contended by the petitioner that the ex-parte award was published by the sole Arbitrator Sh. Alakh Kumar, Advocate on 26th September, 2014 and the same was received by the petitioner on 4th October, 2014.

4. The respondent has strongly opposed the prayer. Reply on behalf of the respondent has been filed wherein it was stated that the said award is not ex-parte as the petitioner was served with the notice of the arbitration case and he appeared before the Arbitrator through counsel and had also sought time to file reply to the statement of claim but it was never filed, therefore, the impression given by the petitioner in the petition is incorrect and false.

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 explanantion 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-I Colly.

6. A mere reading of Section 34(3) of the Act would show that the period of limitation is prescribed with respect to making an application for setting aside an award and if the objections are filed after three months, the period of limitation can only be extended upto the period of 30 days subject to the condition if a party would be able to satisfy the Courts that it was prevented by sufficient cause, otherwise, delay is not to be condoned. In any case after expiry of 30 days after the statutory period of three months, the delay of even one day cannot be condoned if the objections are not filed within three months or along with an application for condonation of delay of 30 days as provided under Section 34(3) of the Act.

7. The Division Bench of this Court has rendered the judgment after considering the various decisions of this Court and Supreme Court in the case of ***Delhi Development Authority v. M/s Durga***

Construction Co. 2013 (139) DRJ 133, wherein in paras 17, 18, 21 and 24 it has been held as under:-

"17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in *Ashok Kumar Parmar v. D.C. Sankhla*, 1995 RLR 85, whereby a Single Judge of this Court held as under:

"Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit."

A Division Bench of this Court upheld the aforesaid view in *D.C. Sankhla v. Ashok Kumar Parmar*, 1995 (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:

"5..... In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted

above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act."

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.

21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in *Competent Placement Services through its Director/Partner v. Delhi Transport Corporation*

through its Chairman, 2011 (2) R.A.J. 347 (Del) has held as under:

"9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in refiling are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refiling the petition."

It is now to be examined as to whether the present matter is covered within the principles laid down in the recent judgment delivered by the Division Bench of this Court in ***Durga Construction*** (supra) and in case, the petitioner's case falls within the range of said decision, then the prayer of the application cannot be considered and if no sufficient cause is shown, then the application is liable to be dismissed.

8. In case, ***Durga Construction*** (supra) is read carefully, it is clear that the sufficient cause has to be explained strictly otherwise the delay in re-filing after the expiry of 30 days cannot be condoned as per rules.

9. As per Rule 5 in Chapter 1-A of Volume 5 of the Delhi High Court Rules and Orders, the objections should have been re-filed within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter Rule 5(3) of the said Rules makes it clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of the Filing Counter

under Sub-Rule 1. After expiry, it shall be considered as a fresh filing, then under the settled law, the delay beyond the expiry of prescribed period cannot be condoned on any ground. The maximum period of 30 days is provided under Rule 5 Chapter-I, Part-A of Volume 5 of the High Court Rules and Orders for removing the objections by re-filing of the petition.

10. In the present case, it appears to the court that the petitioner has made many vague statements in the application. As per the scheme of the Act, the sufficient cause has to be shown and each day delay has to be explained. The petitioner in the present case is unable to do so as the petitioner was not able to remove all objection in Janaury, 2016 and there is gap of many months when the petition was re-filed. No valid and sufficient cause is explained.

11. In failure to do so if there is delay of more than 30 days in re-filing after removing the objection, therefore, it is a fresh filing and such situation, the petition becomes time barred. The delay hence is not condonable as per the decision of Supreme Court in the case of **Union of India v. M/s Popular Construction Co.** (2001) 8 SCC 470 and the said decision has been followed in the subsequent judgements wherein it has been held that the intention of the legislature to provide a definite and inelastic period of limitation will be defeated if parties are allowed to delayed listing of the petition by delaying its re-filing. A stricter scrutiny, both for the reasons that prevented the party as also the number of days, is to be adopted to give effect to statutory provisions of Section 34. Reliance is placed on **Union of India v. Sunrise Enterprises, Panipat**, 187(2012) DLT 244, (paras 12-13).

12. The purpose, aim and object of the enactment (the main object of the Bill Serial No.(v)) is minimum interference by the Court and to minimize the supervisory role of the Court in the arbitral process. Exercise of inherent powers under Section 151 CPC is very difficult in these types of cases where the sufficient cause is not shown. The application in the present case is wholly vague.

13. The petitioner in the present case has failed to satisfy the Court in showing the sufficient cause and the application for condonation of delay is liable to be dismissed who is entitled to get the benefit of thirty days of initial filing and the date on which the defects are cured after thirty days period would be the fresh filing/fresh petition in the present case in the absence of sufficient cause shown by the petitioner. The delay in re-filing is unexplained. In view of the aforesaid reasons, it is clear that the petitioner has failed to satisfy the Court to disclose the sufficient cause.

14. Thus, the application is dismissed. Consequently, the objections filed by the petitioner under Section 34 of the Act are also dismissed. No costs

(MANMOHAN SINGH)
JUDGE

AUGUST 01, 2016