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

+ **FAO 13/2016**

HARDEV SINGH

..... Appellant

Through: Mr Manjit Singh Ahluwalia & Mr J.K.
Singh, Advs.

versus

MUKESH AGGARWAL & ANR.

..... Respondents

Through: Mr Desh Raj & Mr Mohit Singhal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **08.01.2016**

CM No. 525/2016 (Exemption)

1. Allowed subject to just exceptions.

CM No. 526/2016 (Condonation of delay of 81 days in re-filing)

2. This is an application seeking condonation of delay of 81 days in re-filing. For the reasons given therein, the application is allowed and the delay is condoned.

3. The application is, accordingly, disposed of.

FAO 13/2016 & CM No. 524/2016 (Stay)

4. Mr Ahluwalia recognizes the fact that the delay could not have been condoned by the trial court in view of the judgement of the Supreme Court in the case of *Union of India vs M/s Popular Construction Co. AIR 2001 SC 4010*.

5. To be noted, the trial court while considering the plea of the appellant that the action was within limitation prescribed under the Arbitration &

Conciliation Act, 1996 (in short the 1996 Act), has given the benefit of Section 14 of the Limitation Act, 1963 by excluding the time spent by the appellant between 12.04.2013 and 19.04.2014. The appellant had, as a matter of fact, filed a petition under Section 34 of the 1996 Act, on 12.04.2013, albeit before the Civil Judge. As per the impugned judgement, the Civil Judge “dismissed” the petition for want of jurisdiction, on 19.04.2014. Vide the impugned judgement the trial court has excluded the said period, as indicated above; despite which, there is a delay beyond the time prescribed under Section 34(3) of the 1996 Act.

6. In these circumstances, Mr Ahluwalia, learned counsel for the appellant, seeks leave to withdraw the appeal and take whatever remedy that may be available to the appellant in the execution proceedings.

7. The appeal and the application are, accordingly, dismissed as withdrawn. The appellant will be at liberty to take recourse to any remedy that may be available to him in the execution proceedings, albeit in accordance with law.

8. Dasti.

RAJIV SHAKDHER, J

JANUARY 08, 2016

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