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

Date of the Decision: July 20, 2016

+ **FAO 246/2016**

LALIT KUMAR

..... Appellant

Through: Mr. Hemant Sharma, Advocate

versus

INDIABULLS SECURITIES LTD AND ANR

.....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

Taken up on office note.

Office note perused.

C.M.No. 20361/2016

There is delay of six days' in re-filing the accompanying appeal.

For the reasons stated in the application, it is allowed and the delay of six days' in re-filing the accompanying appeal stands condoned.

The application stands disposed of.

FAO 246/2016 & C.M.No.20359/2016 (stay)

Against an Award of 29th June, 2013, received on 12th July, 2013, appellant had filed an consumer complaint on 13th August, 2013 wherein it is not disclosed that appellant has already suffered an Award. It is simpliciter complaint pertaining to share and security dispute. The said consumer complaint was ultimately withdrawn by appellant on 11th July, 2015 and upon receiving the aforesaid order of 21st July, 2015, appellant

had filed objections under Section 34 of *the Arbitration and Conciliation Act, 1996* on 12th August, 2015, which have been dismissed vide impugned order by observing that the objections filed are time barred.

At the hearing, learned counsel for appellant had placed reliance upon Apex Court's decision in *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others* (2008) 7 SCC 169 to submit that the benefit of Section 14 of the Limitation Act, 1963 is available in proceedings under the Arbitration and Conciliation Act and since appellant has bonafidely pursued the consumer forum complaint, therefore, trial court has erred in not extending the benefit of Section 14 *the Limitation Act* to appellant.

To test aforesaid contention, vide order of 27th May, 2016, appellant was directed to place on record the pleadings of the complaint in Consumer Forum in order to find out as to whether appellant had disclosed about the passing of the Award in it or not. Now, copy of the pleadings of the Consumer Forum have been placed on record and its perusal discloses that in the complaint filed before the Consumer Forum by appellant, there is no whisper of passing of any Award against appellant.

In the rejoinder filed before the Consumer Forum, it is simply stated as under: -

*“Arbitrator has acted in collusion with the opposite party
i.e. the respondent and hence, said proceedings are wrong.”*

To say the least, this is hardly a disclosure of the true facts. It is not understandable as to why appellant-plaintiff was not candid in disclosing that he is challenging the Award of 29th June, 2013 on specific grounds.

During the course of hearing, learned counsel for appellant submitted that appellant had infact handed over copy of the Award to his erstwhile counsel, who in his wisdom had chosen not to assail it in the proceedings before the Consumer Forum. If it was so, then it is reasonably expected from appellant that he would state so in the objections under Section 34 of *the Arbitration and Conciliation Act, 1996* filed before the trial court. It was pointed out that in the application under Section 34 of *the Arbitration and Conciliation Act, 1996*, it is disclosed that instead of challenging the arbitral Award of 29th June, 2013, the appellant was advised to approach the Consumer Forum for redressal of his grievance. This disclosure by itself is not sufficient because it is not stated as to who had advised. Orally it was stated by learned counsel for appellant that such advice was tendered to appellant by his previous counsel. This is hard to believe for the reason that if it was so, then appellant ought to have said in his application under Section 34 of *the Arbitration and Conciliation Act, 1996* that he has handed over the copy of the Award to his counsel and told him to challenge it. It is not so said. This Court is of the considered view that filing of an complaint before the Consumer Forum was not *bona fide* and so the benefit of Section 14 of *the Limitation Act* does not accrue in favour of the appellant.

In view of the aforesaid, finding no substance in this appeal, it is dismissed alongwith the pending application.

(SUNIL GAUR)
JUDGE

JULY 20, 2016

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