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

+ **FAO(OS) 176/2016**

Date of decision: 3rd August, 2017

GREEN VALLEY CGHS LTD Appellant
Through Mr. Akhil Sibal and Mr. Khalid
Arshad, Advocates.

Versus

M/S GURCHARAN SINGH Respondent
Through Mr. Raman Kapur, Sr.
Advocate with Mr. Dhiraj Sachdeva,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL)

This intra-Court appeal by Green Valley Cooperative Group Housing Society Limited impugns order dated 7th April, 2016, whereby the learned single Judge has refused to condone delay of 129 days in re-filing of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (Act, for short). The delay would be 159 days if the initial date of filing i.e. 29th October, 2014 is ignored and the objections are treated as filed on 4th April, 2014, when the defects raised were finally removed in entirety.

2. The appellant-Society has challenged the Award dated 23rd July, 2014 by filing the aforesaid objections. The objections, it is accepted

and admitted, were filed within time as prescribed under Section 34 of the Act on 27th October, 2014.

3. The objections, however, were returned under office objection on 30th October, 2014. The objections were taken back by the counsel for the appellant Mr. B.N. Singhvi and were re-filed on 7th November, 2014. It appears that the objections were not entirely removed. The Registry once again returned the objections for this reason and also raised new objections on 11th November, 2014. The objections were re-filed on 22nd November, 2014 after including typed papers. Yet again, the objections were returned under office objection on 24th November, 2014. This process of filing and re-filing of the objections in the Registry continued till all objections/defects were removed on 4th April, 2015.

4. While this exercise of filing and re-filing was in progress, there was modification in the practice directions. With effect from 2nd February, 2015, there was a mandate to file electronic or soft copy in arbitration matters and filing by other modes was discontinued and prohibited.

5. The appellant has filed before us, affidavit of Narender Bhalla, the Secretary of the appellant society. In the said affidavit, the appellant society asserts that they had engaged Mr. B.N. Singhvi as an Advocate to file objections and appear for them. The appellant-society has filed a criminal complaint dated 31st October, 2016 against him, which has been registered at Police Station-Sector 23, Dwarka. The allegation is that Mr. B.N. Singhvi was impersonating as an advocate and had played a fraud. The appellant has paid Rs.

8,98,000/- to Mr. B.N. Singhvi. The bill of Mr. B.N. Singhvi of Rs.8,98,000/- dated 6th March, 2015 towards drafting, photocopying, typing, filing, court charges, court fee and scanning as many as one thousand pages, for filing a CD in E-filing process etc. has been enclosed. The bill was for the objections under Section 34 of the Act. The appellants have in addition paid Rs.2,00,000/- (including Rs.20,000/- towards TDS) towards court fee.

6. Mr. B.N. Singhvi has also filed an affidavit professing that he was enrolled with Bar Council of Maharashtra and Goa. He accepts and agrees that the previous management committee of the appellant society had appointed him to file objections under Section 34 of the Act. The objections were initially filed within time on 27th October, 2014. The objection petition was of more than six hundred pages and in two volumes. Defects were pointed out by the Registry time and again on 14 occasions and removal of objections and re-filing took time.

7. On the direction of the Court, Mr. Ankur Sethia, an associate of Mr. B.N. Singhvi, has also filed an affidavit. Mr. Ankur Sethia was assisting Mr. B.N. Singhvi and accepts that he was occasionally doing clerical work in the office between 2013 and 2014.

8. The office objections raised also pertained to the documents etc. enclosed with the petition filed under Section 34 of the Act. Typed copy etc. were required to be filed. The objection raised required typing and the number of pages were substantial. What is also apparent is that the appellant society has paid substantial amount to Mr. B.N. Singhvi engaged by them. The typing work and work of

removal of office objection was the obligation and work assigned to Mr. B.N. Singhvi. The total amount due and payable under the Award, it is stated, would be in excess of Rs.6 crores.

9. Be that as it may, when we balance lapses, with the facts equities and the consequences, we feel that it would be just and fair if the delay is condoned subject to payment of costs. We have, while examining and balancing equities, taken into consideration the fee paid by the appellant society, quantum of Award and conduct of the appellant society. We have also taken into consideration the inconvenience suffered by the respondent contractor and the delay occasioned. In view of the pendency of the present appeal, the respondent has not initiated or filed execution proceedings.

10. The appellant-society shall pay costs of Rs.2,50,000/- to the respondent. The aforesaid costs would be paid within four weeks from today. On the cost being paid, the delay in re-filing of objections would be treated as condoned.

11. The appeal is allowed in the aforesaid terms.

12. The parties will appear before the single Judge on 11th September, 2017. As the matter has remained pending for a long time, the counsel for the parties state that they will be requesting the single Judge for expeditious disposal.

SANJIV KHANNA, J.

**AUGUST 03, 2017
NA/VKR**

NAVIN CHAWLA, J.