

+ **FAO No. 355/2016**

% **18th July, 2017**

Through: Mr.Saurabh Tiwari, Advocate

versus

..... Respondents

Through: Mr.Atul Kumar and Mr.Girish Chandra, Advocates for R-1.

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 27239/2016 (for delay)

1. For the reasons stated in the application, delay of 87 days in filing the appeal is condoned, more so in view of the ratio of the judgment of the Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy* AIR 1998 SC 3222, which holds that courts should be liberal while condoning the delay inasmuch as unless the delay

suggests gross negligence or *malafides* for delaying the disposal of the case, delay should be condoned.

2. In my view, delay of 87 days is not such a huge delay by which gross negligence or *malafides* can be imputed to the appellant. The application is therefore allowed and delay of 87 days in filing the appeal is condoned.

C.M. No. 42316/2016 (u/O XXII R 1 and 2 r/w S.151 CPC)

3. For the reasons stated in the application and for the reason that the right to sue survives, this application is allowed. Legal heirs of the appellant are substituted in place of the appellant.

4. The application stands disposed of.

FAO No. 355/2016 & C.M. No. 27238/2016 (for stay)

5. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') impugns the judgment of the court below dated 10.12.2015, by which the court below has dismissed the objections filed by the appellant under Section 34 of the Act.

6. The impugned judgment dismissing the objections, I am forced to note, is an apology for the expression judgment. In an impugned judgment what are the respective cases of the parties and the issues to be decided have to be mentioned. Thereafter how the issues are decided is discussed. The impugned judgment however only states that Award is passed by the Arbitrator and there are no grounds for setting aside of the Award under Section 34 of the Act because there is no incapacity of the objector or any issue of lack of notice. It is also observed that the Award does not deserve to be set aside as it is not in conflict with the public policy of India.

7. This Court is receiving many judgments of the courts below which are most unfortunately dismissing the objections by simply stating that the Award is not against the public policy or the Award does not violate the ratio of the judgment of the Supreme Court in *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705* and the other connected judgments. In my opinion, this is an unacceptable practice. Since this Court has received a series of cases where objections under Section 34 of the Act are being decided without even mentioning what the disputes between the parties are,

how the Award has decided the same and how a court hearing objections under Section 34 of the Act cannot interfere because the Award, as per the reasoning, is neither illegal or perverse including not falling under the ingredients of Section 34 of the Act, therefore, while setting aside the impugned judgment on the ground of complete absence of reasoning as also discussion as regards what were the issues involved and how they are decided, a copy of this Court's judgment along with the impugned judgment dated 10.12.2015 be put up before Hon'ble the Acting Chief Justice, so that appropriate directions can be issued, if Hon'ble the Acting Chief Justice so deems fit, to the District Courts that non-speaking judgments cannot be passed while dealing with the objections which are filed under Section 34 of the Act.

8. To show that the present impugned judgment is a completely non-speaking judgment, and as stated above is an apology for the expression judgment, the relevant paras of the impugned judgment of the court below are reproduced as under:-

“5. I have heard ld. counsel for both the parties very extensively. I have also gone through the file and written submissions placed on record.

6. Hon'ble Delhi High Court in case titled as **DDA vs Anand Associates 151 (2008) DLT 18** had held that court does not sit in appeal

over an Award passed by Arbitrator. I cannot reappraise evidence which had been led before Arbitrator. Court has very limited jurisdiction.

7. As per Section 34 of Arbitration and Conciliation Act, an arbitration award can be set aside by the court only if it satisfies any of the grounds mentioned in section 34 (2) and (3) of the Act. Under no other ground, arbitration award can be set aside. The only ground under which award can be interfered with is under section 34 of the Act.

8. According to Section 34 (2) (i), if a party is under some incapacity, award can be set aside. Here there is no incapacity of the objector. As per sub clause (ii), if the Agreement is invalid then also award can be set aside. Here the agreement was valid. As per sub clause (iii), if objector is not given proper notice then award can be set aside. Here objector had participated in the proceedings. As per sub clause (iv), if the award deals with dispute not contemplated then also award can be set aside. Here dispute referred was as per Agreement and was contemplated. As per sub clause (v), if composition of the Tribunal is not as per agreement then also award can be set aside. Here there was nothing wrong with the composition. As per Section 34 (2) (b), if subject matter of the dispute is not capable of settlement or the Award is in conflict with public policy of India then award can also be set aside. Here subject matter is capable of settlement and the award was not in conflict with public policy.

9. This court is not to sit in appeal over the Award passed. It is merely to see if Arbitrator has not acted as per law or he himself misconducted or the Award was in conflict with existing legal provisions. All averments regarding competency of A.N.Sharma could have been proved before arbitrator by leading evidence. Unfortunately, objector had not led any evidence. Function of the court is akin to executing court. Like executing court cannot go beyond decree, this court cannot go beyond the award. Objections call for dismissal and same are dismissed. File be consigned to Record Room. No order as to costs.”

9. Accordingly, the appeal is allowed. The impugned judgment dated 10.12.2015 is set aside and it is ordered that the case be remanded back to the court below to decide the case in accordance with law after setting out the facts in issue, discussion on the relevant issues and giving reasoning for the conclusion which is to be arrived at

by the court below for allowing or dismissing the objections under Section 34 of the Act.

10. Parties to appear before the District and Sessions Court (North), Rohini Courts, Delhi on 24th August, 2017 and the District and Sessions Judge will mark the objections under Section 34 of the Act for disposal to a competent court in accordance with law. Trial court record be sent back.

JULY 18, 2017
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VALMIKI J. MEHTA, J



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