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

+ **FAO(OS) 330/2016 & CM 42594/2016**

M/S MS SHOES EAST LTD Appellant
Through: Mr Pavan Sachdeva

versus

RAMRATI Respondent
Through: Mr Puneet Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **21.02.2017**

The present appeal has been filed by the appellant being aggrieved by the order dated 17.10.2016 passed by the learned Single Judge in I.A. No. 9526/2016(delay in re-filing) and I.A. No. 9527/2016 (delay in filing).

The first ground taken by Mr Pavan Sachdeva, who is the Chairman-cum-Managing Director of the appellant company and who appears in person, is that the said applications were decided without any notice to him. He has pointed out that, although, notice had been directed on an earlier occasion, the same was not served on him and in fact the process fee which was filed by the respondent/petitioner was lying in objections.

Another ground taken by the appellant is that the award was made on 09.03.2016 and as per the application (I.A. 9527/2016) the period of three months would have expired on 07.06.2016, that is, during the summer recess of this court. This, according to the appellant, clearly means that the starting point of limitation was 09.03.2016 itself. Consequently, it was submitted on behalf of the appellant that the period of three months would expire on 07.06.2016 and as at that time, the Court was in summer recess,

the petition under Section 34 of the of the Arbitration and Conciliation Act, 1996 could have been filed on the first day on which it re-opened, which was on 08.07.2016. It was further submitted on behalf of the appellant that, although, the respondent/petitioner claimed that the petition under Section 34 was filed on 08.07.2016, in fact, it had been filed on 21.07.2016. Therefore, the benefit of filing on 08.07.2016 would not be available to the respondent/petitioner. In other words, the duration between 09.06.2016 and 21.07.2016 being more than 120 days, the delay, in any event could not be condoned because of the proviso to Section 34(3) of the said Act.

The learned counsel for the respondent, of course, disputes all these submissions.

However, the main point is that these aspects require consideration by the learned Single Judge and to which the learned Single Judge has not alluded to in the impugned order. Consequently, the impugned order passed on I.A. Nos. 9526/2016 and 9527/2016 are set aside. The said applications are restored on the file of the learned Single Judge who shall pass appropriate orders after considering the arguments advanced by the learned counsel for the parties.

The appeal is allowed to the aforesaid extent.

The applications be listed before the learned Single Judge on 08.03.2017 on which date, main OMP is already listed.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

FEBRUARY 21, 2017
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