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

+ C.R.P. 126/2015

C L EDUCATE LTD

..... Petitioner

Through: Mr.D.K.Sharma, Advocate.

versus

NITIN GUPTA

..... Respondent

Through: Mr.Ajit Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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18.05.2017

C.R.P. 126/2015

1. By filing the instant petition, the petitioner (who was respondent in CS No.11/2011) has impugned the order dated 9th July, 2015 passed by learned Trial Court whereby the delay of 23 days in filing the petition was condoned subject to cost of Rs.2000/- to be paid by the respondent herein to the petitioner herein.

2. The order impugned herein reads as under:-

'9.7.2015

Present : Sh.Ajit Singh, adv. for petitioner.

Sh.D.K.Sharma, adv. for respondent no.1 & 2.

Arguments on application for condonation of delay in filing the petition are heard.

It is argued by Ld. Counsel for petitioner that there is a delay of 23 days in filing the objections.

Ld. Counsel for respondents has strongly opposed this application on the ground that petitioner has not been able to show any sufficient cause, which prevented the petitioner to file the petition within three months of the award as per proviso to Section 34 (3) of Arbitration & Conciliation Act, 1996.

I have considered all facts and circumstances. I am of the opinion that as per the above stated provision the limitation for filing the petition is three months, which can be extended for next 30 days by the Court. Though I am not convinced with the submissions of Ld. Counsel for petitioner, however, I am of the opinion that interest of justice would require that the petition should be heard on merits. Accordingly, I condone the delay in filing the petition subject to cost of Rs.2000/- to be paid by the petitioner to respondents. Cost paid.

To come up for final arguments on petition on 19.8.2015 at 2.00 pm.'

3. The question arising for consideration in this revision petition is whether after accepting the cost, subject to which the delay in filing the petition was condoned, the petitioner can still assail the order.
4. The legal position has been considered by the Supreme Court in the decision reported as Bijendra Nath Srivastava (dead) through LRs. Vs. Mayank Srivastava and Ors. AIR 1994 SC 2562 wherein, in para 20 of the report, it was held as under:-

'20. That apart the principle of estoppels which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits.'

5. In the instant case, the delay in filing the petition was condoned subject to cost of Rs.2000/- which has been accepted by the petitioner herein.

6. Now it is not open to the petition to question the legality of the impugned order on the ground that the learned Trial Court was not convinced with the submissions of learned counsel for the respondent herein and condone the delay in the interest of justice.

7. The petition is dismissed.

CM No.15506/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 18, 2017

'st'