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

+ O.M.P. (COMM) 267/2018

UNION OF INDIA

..... Petitioner

Through: Mr.Ashok Singh and Mr.Rakesh
Kumar, Advs. along with Mr.Anil
Gill, O.A.

versus

INTERNATIONAL CARGO TERMINAL AND RAIL
INFRASTRUCTURE PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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09.07.2018

IA No.8529/2018 (Exemption)

Allowed, subject to all just exceptions.

I.A. Nos.8530-31/2018 (Delay)

The petitioner, by way of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenges the Arbitral Award dated 30.05.2016. The petitioner had earlier challenged the Impugned Award by filing a petition under Section 34 of the Act before the Court of Additional District Judge, Patiala House Court, New Delhi, being Arbitration Case No.17341/2016. The same was filed on 23.08.2016. The respondent filed an application challenging the

maintainability of the said petition on the ground of pecuniary jurisdiction. The Additional District Judge vide order dated 24.02.2018 accepted the said challenge and ordered return of the petition to be filed in the appropriate Court. The petitioner instead of refiling the said petition before this Court, drafted a fresh petition and has filed the same on 11.5.2018.

Learned counsel for the petitioner submits that the same petition was not refiled as there is a difference in format of the petition which is to be filed before the District Court and one which is to be filed before this Court. However, he does not deny that the petition has been redrafted for the purpose of filing before this Court. It is worth noting that though the petition was ordered to be returned by the order dated 24.02.2018 passed by the Additional District Judge, New Delhi, the petitioner states to have applied for a copy of the order and return of the plaint only on 01.06.2018. This again would be beyond the period of the limitation.

Learned counsel for the petitioner submits that as the earlier petition before the District Court was filed on 23.08.2016, the same should be considered as the date of filing of the present petition for the purpose of counting the limitation period under Section 34(3) of the Act. I am unable to agree with the said submission. The present is a fresh petition filed challenging the Impugned Award and has been filed only on 11.05.2018, therefore, the date which has to be considered for the purpose of limitation under Section 34(3) of the Act is 11.05.2018. The petitioner would at best be entitled to claim benefit of Section 14 of the Limitation Act for the period between filing of the petition before the District Court on 23.08.2016 and the return of the petition by the Order dated 24.02.2018. Section 14 of the Limitation Act is reproduced herein below:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

To avail the benefit of Section 14 of the Limitation Act, the petitioner

must show that it was prosecuting its case with due diligence and in good faith, before a Court which lacked jurisdiction. Once these pre-conditions are shown, the time during which the petitioner was prosecuting such case shall be excluded in computing the period of limitation.

Section 34(3) of the Act prescribes the period of limitation for the purpose of filing of the petition under Section 34 of the Act and also the maximum period upto which the Court may condone the delay. The same is reproduced herein below:

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

The above provision restricts the power of the Court to condone the delay in filing of the petition only to a period of 30 days after the expiry of three months from the receipt of the Arbitral Award.

The Supreme Court in **Anil Kumar Jinabhai Patel (D) thr. Lrs. V. Pravindchandra Jinabhai Patel and Ors.**, 2018 SCC OnLine SC 276, has held that the Court would have no power to condone the delay beyond the period of 30 days after the expiry of the three months period from the receipt of a copy of the Award.

In view of the above even assuming that the petitioner is entitled to seek benefit of Section 14 of the Limitation Act, the present petition is

beyond the period of 30 days from the expiry of three months from the date of the receipt of the copy of the Impugned Award by the petitioner and excluding the time from the filing of the petition before the District Court to the order of return of the same. Therefore, the petition is barred by limitation and this Court would have no jurisdiction to condone this delay.

The applications are accordingly dismissed.

OMP(COMM) & I.A. No.8532/2018

In view of the dismissal of the applications seeking condonation of delay, the petition and the pending application are dismissed.

NAVIN CHAWLA, J

JULY 09, 2018/Arya