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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd November, 2018

+ O.M.P. (COMM) 376/2018 & IA 14194/2018
UNION OF INDIA

..... Petitioner

Through: Mr.Jaswinder Singh, Adv.

versus

M/S. JCB INDIA LTD.

..... Respondent

Through: Mr.Ashish Kumar,
Mr.Rameezuddin Raja &
Ms.Khushboo Garg, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner challenging the Arbitral Award dated 14.10.2016 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 17.08.1993 executed between the parties for the supply of 32 nos. JCB excavators loaders.
2. The petitioner received the copy of the Award from the Arbitrator on 21.10.2016 and proceeded to file the petition under Section 34 of the Act before the Court of District Judge, Patiala House Courts, New Delhi on 20.02.2017, which is the thirtieth day after the expiry of the period of three months from the date of the receipt of the Award. The petition

was numbered as Arb. Case No. 1298/2017.

3. The Additional District Judge, vide his order dated 29.01.2018 condoned the delay in filing of the petition.

4. On an objection being taken by the respondent for lack of pecuniary jurisdiction of the Court, the Additional District Judge vide his order dated 04.04.2018 accepted the said objections of the respondent and ordered return of the petition to the petitioner to be presented in the Court of competent jurisdiction.

5. The petitioner, thereafter filed an application seeking return of the plaint on 16.05.2018. On filing of the said application, the petition was returned to the petitioner on 13.07.2018.

6. It is the case of the petitioner that the petitioner thereafter made necessary amendments in the petition as to make it compliant with the filing procedure of this Court; certain inputs were also taken from the petitioner and the same was then filed in this Court on 30.07.2018.

7. The learned counsel for the petitioner submits that only formal amendments were made in the petition and the grounds for challenge remained the same as were filed before the Court of the Additional District Judge.

8. The learned counsel for the respondent submits that as the petition has been filed before this Court beyond the period of limitation as prescribed under Section 34 (3) of the Act and, infact, being even beyond the period of thirty days from the expiry of the three months period from the date of the receipt of the Award, such delay cannot be condoned by this Court. Relying upon the judgment of the Supreme Court in *Hanamanthappa and Another v. Chandrashekharappa and*

Others, 1997 9 SCC 688, and of this Court in *Vogel Media International GMBH & ANR. v. Jasu Shah & Ors.*, 115 2014 DLT 679, he submits that where the plaint (in this case the petition) is returned under Order VII Rule 10 of the Code of Civil Procedure, the same shall be treated as a petition filed afresh for the purpose of limitation.

9. He further places reliance on the judgment of this Court in *Executive Engineer v. Shree Ram Construction Co.*, 2010 120 DRJ 615 to contend that the petitioner would at best be entitled to the benefit of exclusion of the time under Section 14 of the Limitation Act, 1963 for the period when the petition was pending before the Court of the Additional District Judge, but even after the exclusion of such time, as the petition has been filed beyond the period of thirty days from the prescribed period of three months, this Court would not have the jurisdiction to condone the delay. He further relies on the Judgment of the Supreme Court in *Union of India v. Popular Construction Co.*, (2001) 8 SCC 470, to contend that Section 5 of the Limitation Act, 1963 is not applicable to proceedings under Section 34 of the Act.

10. On the other hand the learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in *Joginder Tuli v. S.L. Bhatia and Another*, (1997) 1 SCC 502, as also of this Court in *Narendar Singh & Ors. v. Indian Institute of Architects*, 205 (2013) DLT 240 (DB), *Ziff-Davis Inc. v. Dr. J.K. Jain & Ors.*, 2006 (32) PTC 86 (Del.) and *Hawkins Cookers Limited v. Citizen Metal Industries (India)*, 133 (2006) DLT 281 to contend that where the suit (in this case the petition) has been returned for want of pecuniary jurisdiction, this

Court would have the jurisdiction to treat the same as having being transferred under Section 24 of the Code of Civil Procedure and take up the proceedings from the stage that they were at before the Court of Additional District Judge. He submits that if this course is adopted, then the date of filing of the petition before the District Judge would be determinable of the question of limitation and the delay having being condoned by the District Judge, the present petition would be maintainable.

11. He further places reliance on the judgment of *Aviat Chemicals Pvt. Ltd. & Anrs. v. Magna Laboratories (Gujarat) Pvt. Ltd. & Anr.*, AIR 2006 Delhi 115. He further places reliance on the judgment of Supreme Court in *Ram Ujarey v. Union of India*, (1991) 1 SCC 685 to contend that even otherwise, the petitioner would be entitled to the benefit of exclusion of the period right till the return of the plaint and a more liberal approach is to be adopted while considering the question of delay.

12. I have heard the learned counsels for the parties. It is undisputed that the petition filed before the District Judge was not maintainable due to lack of pecuniary jurisdiction in that Court. It is further not disputed that the same was filed on the thirtieth day after the expiry of the period of three months from the receipt of the copy of the Award.

13. By the order dated 04.04.2018 the learned Additional District Judge ordered return of the plaint for want of pecuniary jurisdiction. Though the learned counsel for the petitioner submits that the learned Additional District Judge should have given the petitioner notice in accordance with the provisions of Rule 10 A of Order VII of the Code

of Civil Procedure before ordering return of plaint, the subsequent events would show that this merely is an afterthought. The petitioner applied for return of the plaint and never prayed for benefit of Order VII Rule 10A of the Code of Civil Procedure. In any case, the present petition is not an appeal against the order dated 04.04.2018 and therefore, this question cannot be considered by this Court in the present proceedings. The fact remains that after passing of the order of 04.04.2018, the petitioner filed an application seeking return of the plaint only on 16.05.2018, that is, after more than the period of one month. There is absolutely no explanation given by the petitioner for this delay. The petition was returned to the petitioner on 13.07.2018 and was filed before this Court on 30.07.2018. Though it may be correct that the petition requires certain formal amendments for the purpose of filing of the same before this Court, the fact remains that in terms of Section 14 of the Limitation Act, 1996, the petitioner would be entitled to exclusion of time for the purpose of limitation only between the period of filing of the petition before the District Court, that is, 20.02.2017 to 04.04.2018, that is, the date of the order, or, even if one is to stretch the same, till 13.07.2018. Either way, the period taken from the receipt of the copy of the Award till the filing of the same before this Court would be more than three months and thirty days, the maximum permissible period which this Court can condone and entertain a petition under Section 34 of the Act.

14. Reliance of the learned counsel for the petitioner on the judgment of the Supreme Court in *Joginder Tuli* (Supra) is ill founded inasmuch as in that case the Supreme Court was considering the plea whether the

applicant therein could be allowed to raise a Counter Claim. Taking into account that the issues had already been framed by the Court before the proceedings were transferred to the District Court, the Supreme Court held that since the evidence in that case had already been adduced by the parties, the direction of the High Court for the proceeding to be taken up from the stage that they were at before that Court, cannot be faulted. Infact, the Supreme Court noted that where the plaint is directed to be returned for presentation before the proper Court, it has to start from the beginning.

15. In the present case, as noted above, the proceedings before the District Court were not properly instituted as that Court had no pecuniary jurisdiction to entertain the said petition. In any case, the proceedings were at a preliminary stage with only the application seeking condonation of delay filed by the petitioner having been considered by the Additional District Judge. Infact, the learned counsel for the respondent submits that even a formal notice of the petition had not been issued to the respondent before the order of return of plaint.

16. Similarly, reliance of the petitioner on the judgment of this Court in *Narendar Singh & Ors.* (Supra) is ill founded. In that case the suit had originally been filed before the High Court, however, had been transferred to the Court of Additional District Judge upon increase in the pecuniary jurisdiction of the District Courts. By that stage, issues had already been framed by the Court. The plaint was thereafter ordered to be returned by the District Judge to the High Court based on the answer given by the witness during cross-examination that the property in dispute was valued at more than Rs. 1 crore. The plaintiff in that suit

thereafter, filed an application before the High Court requesting the original plaint to be taken on record and the matter to be proceeded from the stage at which it was before the District Courts. This prayer was allowed by the Single Judge. The said order was challenged before the Division Bench of this Court, which placed reliance on the judgment in **Joginder Tuli** (supra) and held that there is no universal or invariable rule that once the plaint is returned under Order VII Rule 10 of the Code of Civil Procedure, the proceedings before the competent Court have to be continued *de novo*. It was, therefore, in the peculiar facts of that case that the Court came to the above conclusion.

17. In **Ziff-Davis Inc.** (supra), again due to the amendment in the pecuniary jurisdiction of the Court, the suit filed before this Court was transferred to the District Court. Before the District Court an application seeking amendment in the valuation of the suit was filed by the plaintiff. The defendant contended that with the amendment being allowed, the only course of action to be followed by the District Judge was to return such a plaint under Order VII Rule 10 of the Code of Civil Procedure and for such a suit thereafter to be proceeded *de novo*. This contention was rejected by this Court by holding that the order of the District Judge should be read as the one placing the matter back before the High Court which again acquired jurisdiction. As noted above, in the present case the petition itself had been filed in the Court which lacked jurisdiction from the date of the inspection itself.

18. In **Hawkins Cookers Limited** (Supra) again the Court was dealing with the situation of change of pecuniary jurisdiction of the Court pursuant to the amendment in the Delhi High Court Act. For the

reasons stated above, even this judgment would have no application to the facts of the present case.

19. In my view, the judgment of this Court in *Aviat Chemicals* (supra) would also have no application to the facts of the present case. In that case the Court was dealing with the situation where the plaintiff sought to amend the plaint with the intention to claim higher amount of damage, leading to consequent increase in the value of the suit for the purpose of the jurisdiction, making it beyond the pecuniary jurisdiction of the court. In those facts this Court ordered that the suit still pending before the District Court can be transferred to this Court by exercising power under Section 24 of the Act.

20. In view of the above, even after granting the benefit of the pendency of the petition filed by the petitioner before the District Judge right till the actual return of the plaint, the present petition having been filed beyond the period of thirty days after the expiry of three months from the date of receipt of the copy of the Award from the Arbitrator, this Court would have no jurisdiction to condone such delay. The petition is therefore dismissed with no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 22, 2018/rv