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

Date of decision: 12th July, 2018

+ **O.M.P. 1603/2014**

DDA

..... Petitioner

Through: Ms. Kanika Singh, Advocate.

versus

BANSAL TRADERS

..... Respondent

Through: Mr. N.K. Jha, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

O.M.P. 1603/2014 & I.A. 25470/2014

1. This is a petition filed under Section 34(3) of the Arbitration & Conciliation Act, 1996 read with Section 14 of the Limitation Act, 1963.
2. The litigation between the parties has had a long history. The parties had entered into agreement dated 25th February, 1982, which had an arbitration clause. The same had resulted in award dated 29th July, 2004 being passed. The said award was challenged by both parties under Section 34 of the Arbitration & Conciliation Act, 1996 (*hereinafter '1996 Act'*) vide O.M.P. Nos. 414/2004 & 31/2005.
3. On 7th November, 2007, the said petitions were disposed of and the award was set aside. A new Arbitrator was appointed by consent of parties.
4. Justice R.C. Chopra (Retd.,) the newly appointed Sole Arbitrator rendered his award on 12th October, 2012. As per the said award, the claims

of Respondent, M/s Bansal Traders were partly allowed and the counter claims were rejected. The Claimant/Respondent filed an execution petition before the Trial Court. In the said execution petition, notice was issued to the DDA. As per the process server report in the said petition, EX. 9/2013, the DDA was served with the petition along with the copy of the award on 22nd May, 2013. In the said Execution proceedings, the Claims of the Respondent/Claimant to the extent they were allowed by the Arbitrator were accepted by DDA and payments were made.

5. The DDA chose to file a petition, in respect of rejection of its Counter Claim, under Section 14 of the Arbitration Act, 1940. A learned Single Judge of this Court vide order dated 14th October, 2014 rejected the said petition with the following observation:-

“11. Accordingly, the suit is returned to the Plaintiff. This would not, however, come in the way of the plaintiff in filing a petition under Section 34 of the 1996 Act, if it would otherwise be maintainable in law.”

6. The present petition was thereafter filed under Section 34(3) of the 1996 Act on 14th November, 2014 and was refiled on 12th December, 2014. Since there was a delay, DDA filed I.A. 25470/2014 praying for condonation of delay.

7. Learned counsel for the DDA has vehemently urged that the entire period during which the petition under Section 14 of the 1940 Act remained pending ought to be excluded for the purposes of determining the delay. She also submits that DDA was entitled to pray for condonation of delay under the 1940 Act. Under the 1996 Act, since DDA was never served with the award from the Arbitrator, it has to be presumed that DDA has no notice of

the award. According to her, under Section 34, mere notice of the award is not sufficient but the award has to be served through the Arbitrator.

8. On the other hand, learned counsel for the Respondent submits that DDA was served with the execution petition on 22nd May, 2013; that itself constitutes adequate notice of the award. He also submits that under Section 14 of the Limitation Act, only if a bona fide proceeding was pending, the time period can be deducted. It is his submission that DDA was all along aware that the 1996 Act would apply inasmuch as even against the earlier award, O.M.P. 31/2005 was preferred under the 1996 Act and not under the 1940 Act. Thus the benefit of the pendency of the Section 14 petition which is not in good faith ought not to be given. He further submits that the application seeking condonation of delay is bereft of material particulars as it does not even mentioned the number of days for which the condonation of delay is sought.

9. The Court has heard the submissions on behalf of the parties. A perusal of the original arbitral record reveals that the learned Arbitrator had despatched the award to the DDA by speed post on 1st February, 2013, at the same time when it was despatched to the Claimant/Respondent. There are two speed post receipts dated 1st February 2013. The service of the award by speed post ought to be deemed to be adequate service as it is through the governmental postal authorities.

10. Moreover, the DDA was clearly served with the execution petition on 27th May, 2013 which fact is also not seriously disputed by the counsel for the Petitioner.

11. The submission that under the 1940 Act, condonation of delay was permissible does not mean that in each and every case, the Court had to

condone the delay. The Court has to see the conduct of the party and depending on the fact of the case, the delay would be either liable to be condoned or rejected. The mere permissibility to condone the delay does not lead to automatic condonation being given in every matter.

12. Admittedly, the DDA was aware that the arbitration proceedings were governed under the 1996 Act as the earlier petition under Section 34 challenging the award was filed under the 1996 Act. Thus there can be no excuse as to why the present award should have been challenged under Section 14 of the 1940 Act, which also lead to wastage of precious judicial time.

13. Moreover, the order dated 14th October, 2014 passed by the Ld. Single Judge has not given the benefit of the period of pendency of Section 14 petition to the Petitioner. The learned Single Judge disposing of the Section 14 petition has observed that the rejection would not come in the way of filing of a petition by the DDA under Section 34 of the 1996 Act **'if maintainable in law'**.

14. The DDA's filing under Section 14 of the 1940 Act was not genuine or bonafide. If anything, it was an act of serious neglect. The Ld. Arbitrator having sent the Award by speed post - nothing further was required to be done. Moreover, the application is not clear as to when the DDA acquired knowledge of the Award. The statement in the application to the effect "*That the Respondent only came to know of the passing of the Impugned Award when it was served with summons from the Ld. Trial Court for hearing dated 1.7.2013 in the Execution proceedings filed by the Respondent. That accordingly the Petitioner attended the said hearing and obtained copy of the Impugned Award from the Execution proceedings*" is vague and

ambiguous. Further, the delay from 22nd May, 2013 to 11th November 2013 i.e., the date of filing of the Section 14 petition under the 1940 Act, is also not explained in the application. Thus, even if the period, during which the petition under Section 14 remained pending, is given, it will not bring the present petition within limitation.

15. In ***Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Ors*** (2012) 3 SCC 563, the Supreme Court has held:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

16. Under the facts and circumstances of the present case, no justifiable grounds exist for condoning the delay. The application seeking condonation is sketchy and does not place all the facts correctly. The delay is not liable to be condoned. Application for condonation of delay is rejected.

17. The OMP is dismissed.

JULY 12, 2018

Rekha

**PRATHIBA M. SINGH
JUDGE**

