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

+ O.M.P. 19/2017

SURAJMAL YADAV

..... Petitioner

Through

Mr.Jayant Bhushan, Sr. Adv. with
Mr.Ankit Swarup and Mr.Suraj Raj,
Advvs.

versus

DELHI STATE INDUSTRIAL INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD.

..... Respondent

Through

Ms.Anusuya Salwan, Ms.Renuka
Arora and Ms.Nikita Salwan, Advvs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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27.09.2018

I.A. No.13243/2018 (Exemption)

Allowed, subject to all just exceptions.

I.A. No.13244/2018 (Delay) and REV.PET.364/2018 & I.A. No.13242/2018 (Stay)

1. I.A.No.13244/2018 is an application seeking condonation of 74 days delay in filing of the present review petition.
2. It is contended by the petitioner that the petitioner is a senior citizen aged about 88 years and was suffering from illness and was also hospitalised in June 2018. It is further asserted that after regaining health, the petitioner and his son met with the erstwhile counsel for the petitioner and on his non-cooperation, engaged a new counsel who studied the matter and filed the present petition. I may here note that when confronted with the fact that order dated 24.05.2018 had been passed in open Court and that the same does not reflect the ground of challenge now sought to be urged, the learned

senior counsel for the petitioner submits that the son of the petitioner was present in person in Court and he has affirmed that though the said ground was sought to be urged, as the query raised by the Court could not be answered by the counsel for the petitioner, the counsel did not pursue the same any further or at the time the order was being dictated in open Court.

3. Apart from the fact that this itself would make the Review Petition not maintainable as it admittedly is based on grounds that were not urged before the Court at the time of hearing, it also shows that the son of the petitioner had been duly assisting the petitioner in prosecution of the present petition. Illness of the petitioner is now being raised only as a justification for the delay in filing of the Review Petition. I therefore, find no merit in the reasons given for seeking the condonation of delay and the present application is liable to be dismissed on the ground of delay alone.

4. However, I have also considered the submission made by the learned senior counsel for the petitioner on merits.

5. The first grievance of the learned senior counsel for the petitioner is that in the Impugned Award the Arbitrator has directed the petitioner to pay the Ground Rent in spite of holding that the petitioner could not raise construction on the plot in question as the respondent had defaulted in execution of the Lease Deed. He submits that in light of the finding, the direction to pay the Ground Rent cannot be sustained. In this regard he places reliance on the judgment dated 03.12.2008 passed by this Court in ***Parmod Kumar v. Lt. Governor of Delhi***, WP(C) 6704-05/2004.

6. I have considered the submission made by the learned senior counsel for the petitioner, however, find no merit in the same. The Arbitrator while dealing with the issue of Ground Rent has placed reliance on the judgment

dated 29.01.2007 of this Court in ***Videocon Industries Limited v. Delhi Development Authority & Anr.***, passed in WP(C) 14961/2004 as also on Clause 7 of the Terms of Auction and has concluded that the said Clause casts an unqualified obligation on the petitioner to pay the ground rent for holding the land allotted. It is not disputed before me that the possession of the land in question had been duly handed over by the respondent to the petitioner in term of the auction.

7. This Court in ***M/s Mapsa Tapes Pvt. Ltd. v Delhi State Industrial and Infrastructure Development Corporation***, 2015 SCC OnLine Del 9396 has considered the earlier judgments of this Court in ***Videocon Industries Limited*** (supra) and ***Parmod Kumar*** (supra) and held that the Court would have no jurisdiction to modify or vary the terms of the contract obtaining between the parties; the remedy, if any, of the petitioner would be to claim damages for default in execution of the Lease Deed by the respondent. Admittedly, no such claim of damages was made by the petitioner in the arbitration proceedings. The Arbitrator being a creature of the contract, could not have modified the terms of the contract and was, in fact, bound by the same.

8. I may only note that the learned senior counsel for the petitioner has submitted that the Division Bench of this Court in its order dated 09.09.2015 passed in LPA 611/2015 ***M/s Mapsa Tapes Pvt. Ltd. v Delhi State Industrial & Infrastructure Development Corporation Ltd.***, had held that the observation of the Single Judge in the above referred judgment, specially in paragraph 2.1, 7 to 7.8 shall have no bearing on the claim made by the appellant therein before the Arbitrator. However, the same was in view of the peculiar facts therein and can have no effect in the present case as the

Arbitrator has passed the Award, which cannot be said to be suffering from any patent illegality on this issue.

9. In ***Parmod Kumar*** (Supra), even the possession of the plot had not been delivered to the petitioner therein. In these facts this Court held that the respondent could not be permitted to charge Ground Rent for the plot when it was not in a position to deliver possession thereof to the petitioner. The said judgment would, therefore, have no application to the facts of the present case.

10. In view of the above, no fault can be found in the Award on this account.

11. Learned senior counsel for the petitioner has further submitted that the Arbitrator has erred in not granting interest on the amount paid by the petitioner for purchase of the stamp duty. In this regard I would first note the direction issued by the Arbitrator:

“In view of the facts pleaded, evidence led and arguments advanced, the Petition partly succeeds. The Respondent is directed to execute the Lease Deed in favour of the Claimant within 6 months from the date of this Award. In case the Respondent is unable to get the Lease Deed executed within the stipulated time frame, with every day of delay, the Respondent shall be liable to pay interest at the rate of 9 percent per annum to be calculated on the auction consideration of Rs.5.52 crore. The Respondent shall ensure that the Stamp Duty of Rs.33,12,040/- as paid by the Claimant shall be re-utilized. In case of failure of re-utilization of paid Stamp Duty, the Respondent shall refund the paid stamp duty of Rs.33,12,040/- to the Claimant along with interest at the rate of 9 percent per annum from date of the Award till date of payment. The Respondent is further directed to provide within 3 months a fresh NOC/EOT, as demanded by the MCD, to the Claimant. The Respondent is

also directed to issue a fresh EOT of 2 years from the date of sanction of the Building Plan to the Claimant for completion of construction at the Plot. The Claimant is directed to pay the arrears of Ground Rent to the Respondent; however, in the circumstance of this case, the Respondent shall not be entitled to any interest from the Claimant on account of delayed payment of Ground Rent. The Respondent is free to demand Ground Rent in accordance to the terms of auction from the date of execution of Lease Deed. The Claimant will also be entitled to recover the cost of the proceedings quantified at Rs.2 Lakhs for Counsel fees together with payment made to the Arbitral Tribunal.”

12. The Arbitrator has therefore, directed that the stamp duty that had been purchased by the petitioner should be reutilised for the purposes of Lease Deed. It is only on the failure of the stamp duty to be reutilised, that the respondent has been directed to refund the amount along with interest @ 9% p.a. from the date of the Award till the date of the payment. Therefore, there is no order of refund of this amount at the first instance. The question of payment of interest thereon, therefore, would not arise. I therefore, can find no fault in the direction issued by the Arbitrator in this regard.

13. In view of the above, apart from the fact that the review is barred by limitation and no sufficient cause for condoning the same has been made out, it is even otherwise not maintainable as it is based on grounds that were never raised before this Court at the time of hearing and even otherwise have no merit.

14. The Review Petition and the applications are accordingly dismissed.

15. There shall be no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 27, 2018/Arya