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

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Judgment delivered on: 11.12.2019

+ FAO 460/2019 & CM APPL. 50367/2019

M/S BANSAL CONSTRUCTIONS COMPANY Appellant

versus

SR DEN IV NORTHERN RAILWAY Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. S.W. Haider, Ms. Pooja Dua and Mr. Raghav Agrawal, Advocates

For the Respondent: Mr. Ashok Singh, Advocate for UOI

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 28.09.2019 whereby application of the appellant under Section 5 of the Limitation Act has been dismissed.

2. Learned counsel for the appellant submits that the petition filed by the appellant under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) impugning award dated 12.07.2018 was delayed by 27 days beyond three months period as provided under Section 34 of the Act.

3. He further submits that on account of an error, in the nomenclature of the application it was mentioned as an application under Section 5 of the Limitation Act instead of application under proviso to Section 34(3) of the Arbitration & Conciliation Act, 1996.

4. Learned counsel submits that the application has been dismissed primarily on the ground that an application under Section 5 of the Limitation Act is not maintainable though a passing reference is made that application does not show sufficient cause.

5. Issue notice. Notice is accepted by learned counsel appearing for the respondent. With the consent of parties the appeal is taken up for final hearing today itself.

6. Perusal of the impugned order dated 28.09.2019 shows that the order primarily dismisses the application on the ground that same was filed under Section 5 of the Limitation Act and not in terms of proviso to Section 34(3) of the Act.

7. There are not reasons stated in the order as to how the court formed an opinion that the cause disclosed by the appellant was not sufficient to condone the delay.

8. No doubt that the appellant had given heading to the application as an application under Section 5 of the Limitation Act, however, the contents of the application clearly shows that the application was filed with a delay of 27 days beyond three months period as provided under

Section 34(3) of the Act and the period is covered by the proviso to Section 34(3) of the Act.

9. Merely because incorrect provision has been cited on the heading of the application would not denude the court of its powers to consider the same in accordance with the correct provisions. The heading of the application is a mere procedural requirement. What is material is the contents of the application.

10. In view of the above, impugned order dated 28.09.2019 is set aside. Consequently, the appeal is allowed. Application filed by the appellant before the Trial Court seeking condonation of delay and the objections under Section 34 of the Act are restored to the file of the trial court.

11. The Application filed by the appellant seeking condonation of delay and the objections under Section 34 of the Act shall be listed before the concerned trial court on 21.01.2020. Trial court shall consider the application seeking condonation of delay on merits.

12. The appeal is disposed of in the above terms.

13. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J.

DECEMBER 11, 2019

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