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

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Judgment delivered on: 09.01.2020

+ FAO 10/2020

THE IRRIGATION & FLOOD CONTROL
DEPARTMENT

..... Appellant

versus

NARESH KUMAR GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Shlok Chandra, Advocates

For the Respondent: Mr. Moni Cinmoy, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 202/2020 (Exemption)

Allowed, subject to all just exceptions.

**CM APPL. 203/2020 (condonation of delay) & CM APPL.
204/2020 (condonation of delay)**

Issue Notice. Notice is accepted by learned counsel appearing for the Respondent.

Learned counsel for the respondent submits that in view of the grounds stated he has no objection to condonation of delay provided a direction is issued to the trial court to expedite the

proceedings.

For the reasons stated in the applications and the fact that appellant has given day to day explanation of the delay that has occurred in filing of the appeal and re-filing of the appeal, the applications are allowed. The delay of 105 days in filing the appeal and the delay of 5 days in re-filing the appeal are condoned.

FAO 10/2020 & CM APPL. 201/2020 (stay)

1. Issue notice. Notice is accepted by learned counsel for the respondent. With the consent of the parties, the petition is taken up for hearing today.
2. Learned counsel for the appellant submits that on account of a clerical error copy of the application under Section 5 of the Limitation Act filed before the trial court has not been placed on record. Photocopy of the application has been produced and the same is taken on record.
3. Learned counsel for the appellant submits that the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) was filed with a delay of 30 days and in terms of proviso to Section 34(3), the Court has the power to condone the delay of 30 days.
4. Learned counsel for the appellant submits that the impugned order was passed *ex-parte* and did not take into account the grounds

mentioned in the application under Section 5 of the Limitation Act filed before the trial court.

5. Learned counsel for the appellant submits that three successive counsels, who were appointed to file objections under Section 34 of the Act, returned the file citing valid reasons because of which delay occurred in filing the objections under Section 34 of the act.

6. Appellant had filed objection under Section 34 of the Act, impugning award dated 01.08.2016. Objections were filed on 30.11.2016.

7. By the impugned order, trial court has dismissed the objections under Section 34 of the Act solely on the ground that same were filed beyond the statutory period of three months as prescribed under Section 34 of the Act.

8. Trial court relying upon the judgment of the Supreme Court in *Union of India Versus Popular Construction Co. (2001) 8 SCC 470*, held that the Supreme Court has directed that the Court does not have the power to condone the delay beyond the period mentioned in Section 34 i.e. three months and 30 days thereafter.

9. Award was passed on 01.08.2016 and the three months' period, as stipulated under Section 34(3) of the Act, expired on 31.10.2016. Thereafter under the proviso to Section 34(3) a delay of 30 days is condonable subject to condition sufficient cause is shown.

10. Objections under Section 34 of the Act were filed on 30.11.2016 i.e. within a period of 30 days from the expiry of three months' period as stipulated under Section 34 (3) of the Act.

11. The application under Section 5 of the Limitation Act was filed seeking condonation of delay of 30 days was really an application in terms of the proviso to Section 34(3) of the Act.

12. The grounds stated in the application are that one — Ms. Sakshi Popli was appointed as a Government Counsel on 05.10.2016, however, on 19.10.2016 she returned the file on account of personal reasons stating that the parties were known to her personally. Thereafter, another Government Counsel — Mr. Iram Majid was appointed as Government Counsel on 24.10.2016 but he returned the file on 26.10.2016 stating that he was empanelled counsel in High Court and accordingly could not file the petition. Thereafter one — Mr. Brijesh Kumar Saini was appointed as a Government Counsel, but he also returned the file by letter dated 17.11.2016 stating that he had been diagnosed with dengue fever and accordingly he could not file the objections under Section 34 of the Act. Thereafter, Mr. Ramraghvendra Kumar was appointed as Government Counsel on 22.11.2016 to whom the file was transmitted on 23.11.2016 and he immediately drafted the objection and filed the same on 30.11.2016.

13. The reasons for delay, mentioned in the application seeking condonation, constitute sufficient cause.

14. I am of the view that the trial court has erred in not appreciating the reasons for delay mentioned by the appellant in the application seeking condonation of delay and also the error in not noticing the delay period was covered under the proviso to Section 34(3) of the Act.

15. In view of the above, impugned order dated 25.03.2019 is set aside. The objections under Section 34 are restored to its original number. The matter is remitted to the trial court for consideration of the objections on merit.

16. Trial court is directed to expeditiously consider the objections under Section 34 of the Act and dispose of the same in accordance with law.

17. Parties shall appear before the trial court for directions on 17.01.2020.

18. The appeal is allowed in the above terms.

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

SANJEEV SACHDEVA, J.

January 09, 2019

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