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

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Date of decision: 15.01.2020

+ O.M.P. 15/2017

AKASH GUPTA

..... Petitioner

Through: Mr. Shivam Chanana, Advocate

versus

PRAVEEN KUMAR GUPTA & ORS.

..... Respondents

Through: Mr. Anshul Duggal, Advocate for
R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. Nos. 9217/2017 and 9219/2017

1. The present applications have been filed seeking condonation of delay of 1405 days in filing the objections against the Award dated 05.04.2013 and condonation of delay of 32 days in re-filing the petition, respectively.

2. The grounds taken in the application under Section 14 of the Limitation Act seeking condonation of delay in filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) are that the arbitral proceedings were adjudicated and decided when the petitioner was in judicial custody during the period 21.02.2013 to 12.04.2013.

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Respondent no.3 and his wife had made every effort to implicate the petitioner in false cases. The petitioner after being released from judicial custody on 13.04.2013 moved to the house of his father-in-law at C/6/158-B, Lawrence Road, Delhi in order to avoid further disputes with respondent no.3 (petitioner's brother). Petitioner stayed at the said address for more than a month but was never informed about the arbitration proceedings.

3. It is further averred in the application that the petitioner is a layman and does not understand the intricacies of law and he was informed by one of his relatives that some case was pending against him in the Delhi High Court which he should attend, otherwise he will not get anything from the properties. The petitioner attended the Court proceedings in the High Court on 02.05.2014 and requested for a copy of the petition. It is averred that due to ulterior motives, copy was only supplied on the next date of hearing i.e. 14.11.2014 and within 90 days of receiving the copy of the said Execution Petition, the petitioner filed objections against the Award on 22.01.2015, on the advice of his erstwhile counsel.

4. The petitioner further avers that on the advice of the counsel, the objections were filed in the pending execution proceedings and were registered as EA (OS) 288/2015. The objections were wrongly filed in the Execution Petition being Ex. P. 327/2013, whereas they should have been filed by way of a separate petition.

5. The petitioner then engaged a new lawyer who inspected the Court file and advised the petitioner to file separate objections. Consequently, the objections filed were withdrawn on 17.05.2017 and the present petition was filed.

6. It is the further case of the petitioner that he never received a signed copy of the Arbitral Award dated 05.04.2013 as mandated by Section 31 (5) of the Act. The Arbitrator was in collusion with respondent nos. 1 and 3, which is confirmed from the fact that the letter dated 15.02.2013 was sent to the petitioner at BA-97, Shalimar Bagh, Delhi and the delivery report shows that the same had been received by the petitioner, whereas the petitioner was not residing at the said address. On the contrary, the entire building at Shalimar Bagh, was in the exclusive possession of respondent no.1 in the year 2013-2014. Respondent no.1 was in active collusion with the Arbitrator and had received a letter under the name of the petitioner to show compliance.

7. In the application, it is further averred that since the petitioner never received the signed copy of the award, the period of limitation never commenced and the application is filed only to avoid technical objections. In any case the petitioner was pursuing his remedy in a wrong Court on the advice of the erstwhile counsel and since this was a bonafide act, benefit of Section 14 of the Limitation Act be given to the petitioner.

8. In the application seeking condonation of delay in refiling the petition, the petitioner has averred that the petition under Section 34 of

the Act was filed on 20.05.2017 and some substantial objections were raised by the Registry. Thereafter, the Courts were closed in the month of June, 2017 and hence objections could not be removed. The petitioner got in touch with his lawyers who were handling his criminal matters to obtain legible copies of the FIRs registered against him. The lawyers informed him that since the Courts were closed, the documents could only be handed over in the month of July.

9. On 15.07.2017 the counsel handed over the copies of the FIRs and other documents to the petitioner. The daughter of the petitioner was unwell for 4 to 5 days and thus the petitioner could only hand over the documents to his counsel on 20.07.2017. As soon as the documents were given, the counsel got them translated and typed and the same were filed in this Court. The petitioner submits that he would suffer immensely if the application is not allowed.

10. Reply has been filed to the application under Section 14 of the Limitation Act by respondent No. 3 and respondent No. 1. Respondent No. 1 has supported the stand of the petitioner. Respondent No. 3 has filed a detailed reply opposing the applications.

11. It is submitted by respondent No. 3 that the petitioner in seeking condonation of delay of 1405 days is abusing the process of law and is seeking a relief which was sought by him earlier in Execution Petition being Ex. P. 327/2013 as the petitioner had filed his objections being EA (OS) 288/2015 in the said execution. It is averred that grave prejudice will

be caused to respondent No. 3, if the petitioner is allowed to pursue the same relief as this would be in the nature of a second inning.

12. The application is also opposed on the ground that the objections are time barred and the Limitation Act does not apply, the Arbitration Act being a special law. Relying on the judgment of the Supreme Court in ***Union of India v. Popular Construction Company (2001) 8 SCC 470*** it is submitted that Section 5 of the Limitation Act would not apply to Arbitration Proceedings and the Court has no power to condone a delay beyond 30 days mentioned in proviso to Section 34(3) of the Act.

13. It is further submitted that while the petitioner claims that his erstwhile counsel wrongly filed objections in the execution proceedings and he thus engaged a new counsel but the fact is that the present counsel on whom the petitioner reposes faith, appeared in the Execution Petition on 23.02.2017 and sought time to argue the objections. He, however, later withdrew the objections on 17.05.2017 and filed fresh objections. Section 14 of the Limitation Act requires good faith and due diligence which the petitioner has failed to show. It is further submitted that even the further delay of three months from February, 2017 to May, 2017 is unexplained.

14. It is further stated in the reply that even during judicial custody, the petitioner was duly represented through his counsel in the Arbitration Proceedings and a *vakalatnama* duly stamped and signed had been filed through his counsel. The allegations of respondent No. 3 and his wife making efforts to implicate the petitioner are denied. It is denied that the

petitioner was unaware of the arbitral proceedings. A signed copy of the award is stated to be served on the petitioner on 18.04.2013. It is further averred that notice invoking the Arbitration Agreement was duly sent to all parties and postal receipts were filed before the Arbitrator. In any case, it is submitted that ignorance of law is no excuse, more particularly, when the petitioner was represented by a counsel.

15. In the reply it is brought out that copy of the paper book was supplied to the petitioner in the Execution Petition on 11.08.2014 which is recorded in the order dated 11.08.2014. Vide order dated 02.05.2014 in the Execution Petition, Court had granted four weeks to the petitioner to file objections but the same were filed beyond the period of limitation on 22.01.2015. Respondent No. 3 has along with the reply filed a *vakalatnama* signed by the petitioner during the Arbitral Proceedings and has also placed a copy of the postal receipt evidencing that the Arbitrator had sent the signed copy of the Award to the petitioner. A Tracking Report has also been filed indicating delivery of the parcel on 18.04.2013, in the name of the petitioner.

16. Learned counsel for the petitioner before this Court contends that on the advice of the previous counsel, he had filed objections in the Execution Petition filed by respondent No. 3. This was a bonafide mistake and when this was realised, the petition was withdrawn and fresh objections were filed under Section 34 of the Act, on 20.05.2017. Since, the petitioner has filed the objections under a bonafide belief and legal

advice that the executing Court was the appropriate Court, benefit of excluding the period for purpose of limitation, under Section 14 of the Limitation Act be given to the petitioner.

17. Learned counsel next contends that the signed copy of the Award was never received by the petitioner and it is only when he learnt of the pendency of the Execution Petition that he appeared in the Court and sought a copy of the petition. Copy was received on 14.11.2014 and thereafter a new counsel was engaged who withdrew the objections and this is so recorded in the order dated 17.05.2017 passed by the Court in the Execution Petition. Finally, the present petition was filed on 20.05.2017, on account of certain objections and the ill health of his daughter. They were re-filed and finally the objections were removed on 11.08.2017. Learned counsel also contends that the report of service of the signed copy of the Award is incorrect and fabricated since the petitioner never lived at the said address. He was residing in the house of his father-in-law and thus there was no occasion for him to have received the Award. He further submits that when the Award was passed on 05.04.2018 the petitioner was in judicial custody and was unaware of the proceedings or their outcome. Learned counsel thus prays that the delay be condoned in the interest of justice and this argument is without prejudice and in the alternative to the argument that there is no delay as the signed copy of the Award was never served on the petitioner.

18. Per contra, learned counsel for respondent No. 3 has argued on the basis of the averments and the contentions raised in the reply, referred to above. Written submissions have been filed by respondent No. 3 where the same arguments have been reiterated. In addition to the arguments above, it is submitted in the written submissions that the petitioner has taken a completely new stand that the signed *vakalatnama* given by the petitioner during his judicial custody was misused by respondent No. 3, which is beyond any pleading or argument ever made by the petitioner and thus cannot be given any weightage. Reliance is placed on judgment of this Court in *M/s Gulati Trading Company v. Sh. Man Mohan Verma & Anr. (2014) SCC OnLine Del 4121* for the said proposition. It is also submitted that the *vakalatnama* in any case cannot be misused since at the time of signing the *vakalatnama* he was in judicial custody and the signature would have been in the presence of a jail official. In the written submission, respondent No. 3 has also adverted to the contention relating to Section 14 of the Limitation Act. A detailed chart has been filed along with the submissions to show that there is an unexplained delay and the same cannot be condoned. The petitioner deliberately resorted to a wrong remedy though was having the assistance and advice of lawyers, throughout.

19. The petitioner in his support has relied upon the judgment in the case of *Consolidated Engineering Enterprises vs. Principal Secretary Irrigation Department & Ors. (2008) 7 SCC 169* to contend that Section 14 of the Limitation Act will apply to petitions under Section 34 of the

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Act. Reliance is also placed on the judgment of the Supreme Court in *Union of India v. Tecco Trichy Engineers & Contractors (2005) 4 SCC 239* for the proposition that once the signed copy of the Award has not been served on the party before the Arbitral Tribunal, it is no service in the eyes of law under Section 31(5) of the Act.

20. Learned counsel for respondent No. 3 has distinguished the judgment in the case of *Consolidated Engineering (supra)* on the ground that the facts of the said case were completely different. The objections to the Award therein were initially filed within the statutory period under Section 34(3) of the Act and once it was realised that they were filed before the wrong forum, they were filed before the appropriate forum and the Court had after analysing the facts of the case, given a categorical finding that the mistake was bonafide. The judgment in the case *Tecco Trichy (supra)* is also distinguished on the ground that in the said case, it was actually found that the Award had been served on the wrong officer in the Ministry of Railways and the Ministry being a vast department, it was impossible for the officer or the department to collect the Award and know all the niceties of the Arbitration proceedings if they were not directly dealing with the subject matter.

21. I have heard the learned counsel for the parties and examined their submissions.

22. The principal contention of the petitioner is that the signed copy of the Award was never sent to the petitioner by the Arbitrator and thus the

limitation has not commenced till date. According to the counsel, the application seeking condonation of delay has been filed only by way of abundant caution. In my view, the said contention merits rejection. Respondent No. 3 has placed on record the postal voucher in support of the service effected by the Arbitrator on the petitioner through the mode of speed post. The date of dispatch is 15.04.2013 at the Shalimar address. Tracking Report has also been placed on record which indicates the delivery of the speed post to 'Akash Gupta', the petitioner herein, on 18.04.2013. The petitioner in order to rebut the Tracking Report and the postal voucher should have placed on record strong and concrete evidence, which has not been done. Nothing has been placed in evidence to indicate that the postal receipt or the Tracking Report is false or fabricated. Presumption would thus have to be drawn in favour of the service having been affected as the delivery is through the Government Agency. In fact, on 18.04.2013 the petitioner was out on bail and not in judicial custody. Thus, it has to be held that the signed copy of the Award has been served on the petitioner on 18.04.2013 and conditions of Section 31 (5) of the Act are satisfied.

23. Section 34(3) of the Act provides a limitation period of three months for filing objections against an Arbitral Award and the Proviso thereto provides an extended period of 30 days, within which the objections can be filed. The Court has discretion in the extended period of 30 days, to condone the delay, if sufficient cause is shown by the objector, for not having approached the Court in the three months limitation period.

Once the 120 days period has expired, the Court has no power to condone the delay even for one day thereafter. This has been so held by the Supreme Court in the case of ***Simplex Infrastructure Ltd. V. Union of India (UOI), 2019 (2) SCC 455***, the relevant portion of which reads as under:-

“18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.”

24. Several Benches of this Court relying on the law laid down by the Supreme Court in the case of ***Simplex Infrastructure (supra)*** have dismissed petitions under Section 34 of the Act on ground of delay in filing beyond a period of 120 days, such as in the case of ***SKS Power Generation (Chhattisgarh) Ltd. vs. ISC Projects Private Limited*** in ***O.M.P. (COMM) 132/2019, Haji Banda Hasan vs. Gupta & Gupta Pvt. O.M.P. 15/2017***

Ltd. (2019) SCC OnLine Del 10018. This Court has also recently in the case of *Sh. Tarsem Jain vs. Bharat Forge Limited & Anr* in *O.M.P. (COMM) 460/2019* decided on 01.11.2019 dismissed a petition filed under Section 34 of the Act beyond the period of 120 days.

25. In view of the said position of law, it would be required to examine whether the objections have been filed by the petitioner within the limitation period of three months or the extended period of 30 days.

26. Based on the postal record produced by the respondent, I have already given a finding above that the petitioner had received the Award on 18.04.2013. The limitation period under Section 34 (3) of the Act would thus start from 19.04.2013 and the period of 120 days thus expired on 17.08.2013. Admittedly, the objections were filed for the first time on 22.01.2015, though in a wrong Forum. Thus, the objections were clearly barred by limitation being filed after a period of 120 days and in view of the settled law, this Court has no power to condone the delay in filing the objections.

27. The next issue which the petitioner has raised and thus needs to be decided is whether the benefit of Section 14 of the Limitation Act can be given to the petitioner. In my view, the said issue is actually irrelevant in the present case. The statutory period of limitation under Section 34(3) of the Act is strict and inflexible. As mentioned above even a period of one day beyond the statutory period of 120 days cannot be condoned. There cannot be a denial to the fact that the petitioner is seeking benefit of a

period from 22.01.2015 to 17.05.2017 on account of the fact that the objections were filed on 22.01.2015 in the Execution Petition. However, one cannot overlook the fact that these objections were filed beyond the period of 120 days. In that view of the matter, the benefit of this period cannot enure to the petitioner. For the sake of record, it also needs a mention that the petitioner has been unable to explain the period of delay between 14.11.2014 when he received a copy of the petition and 22.01.2015 when the objections were filed. Further, there is not even a whisper in the pleadings or even in the arguments as to why the petitioner took two years from 22.01.2015 to 17.05.2017 to withdraw the petition. Even when the objections were withdrawn on 17.05.2017, the petitioner did not even seek liberty to file a fresh petition under Section 34 of the Act. Thus, in my view, the benefit of Section 14 of the Limitation Act cannot be granted to the petitioner.

28. In order to highlight the conduct of the petitioner, it needs to be penned down that even when the present petition was filed on 20.05.2017, it was filed only with 22 pages. No vakalatnama, copy of the Award or the Court fees was filed. The petition was re-filed on 24.07.2017, after clearing the vital defects, while some defects remained and were cleared in the subsequent re-filings. The manner of filing further highlights how diligent the petitioner was in pursuing his remedies.

29. In view of the findings above, this Court does not find it necessary to delve into the other issues raised by the parties as to the connivance

between the Arbitrator and respondent No. 3 or the alleged efforts of respondent No. 3 and his wife to implicate the petitioner, as they do not have any bearing on the question of limitation. The petitioner has not been able to explain the reasons that prevented him from approaching the Court within 3 months of receiving the Award on 18.04.2013 and thus the application seeking condonation of delay deserves to be rejected.

30. The judgments relied upon by the petitioner are of no avail to him. The benefit of Section 14 of the Limitation Act is no doubt available to the litigant in a petition under Section 34 of the Act, but in the present case the limitation period expired well before the petitioner resorted to the remedy of filing the objections in an Execution Petition, which certainly was a wrong forum. Thus, the proposition of law set out in the judgment in the case of *Consolidate Engineering (supra)*, which cannot be disputed would not enure to the advantage of the petitioner.

31. In so far as the judgment in the case *Tecco Trichy (supra)* is concerned, the petitioner as a matter of fact in that case had shown to the Court that the signed copy of the Award had been received in the wrong department of the Railways and the Ministry being vast and having different departments, service on a wrong officer would be of no avail and the Award ought to have been served on the concerned officer.

32. There is no merit in the contentions of the petitioner. Benefit under Section 14 of the Limitation Act cannot be granted to the petitioner, in the present facts and circumstances. The application seeking condonation of

delay of 1405 days is hereby dismissed. Since the present application is dismissed, the application seeking condonation in re-filing is also hereby dismissed.

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In view of the dismissal of the application seeking condonation of delay in filing the objections, the present petition is hereby dismissed.

JYOTI SINGH, J

JANUARY 15, 2020

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