

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

% Judgment delivered on: 04th May, 2022

+ **FAO 257/2021 & CM APPL. 41562/2021**

SHARMA AND ASSOCIATES

..... Appellant

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Advocates who appeared in this case:

For the Appellant: Mr. R.R. Kumar, Advocate.

For the Respondent: Mr. Karan Sharma, ASC, NDMC with Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Mr. Mohit Siwach and Mr. Nirvikar Verma, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 07.08.2021, whereby the application filed by the Appellant under section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act) has been dismissed holding that the appellant has failed to furnish any sufficient cause for not challenging the award within the prescribed period of limitation and consequently the objections filed under Section 34 of the Arbitration Act, impugning the arbitral award dated 14.11.2019, have been dismissed.

2. The Trial Court has held that the appellant has not been able to show sufficient cause for not moving the application within the original period of 90 days.

3. For ascertaining whether the objections have been filed within time and as to whether the Appellant had shown sufficient cause which prevented the appellant from filing the objections within the stipulated period of three months, it would be expedient to refer to the factual matrix.

4. The award impugned was published on 14.11.2019. The appellant on the said date was in Canada. Since the Tribunal was constituted by the Delhi International Arbitration Centre (DIAC for short), Appellant by email dated 16.11.2019, requested DIAC for being provided with a copy of the Award.

5. Appellant was informed that a copy of the award had been sent by speed post, however a soft copy of the award dated 14.11.2019 was sent by email on 20.11.2019. Appellant contends that he received the copy of the award sent by speed post only on his return from Canada.

6. Calculated from 20.11.2019, the time for filing the objections expired on 20.02.2020, excluding the date of receipt of the copy by email.

7. As per the appellant, he was in Canada and returned only on

29.02.2020. Appellant was thereafter quarantined as per the advisory of the Government and as soon as he was released from quarantined, lockdown was imposed in the country. It is contended that as one of his neighbours was tested positive, the entire street, where the house of the appellant is situated, was blocked and no one was allowed out of their houses. It was only on 04.06.2020 that his neighbor delivered the hard copy of the award. It is submitted that his counsel was not cooperating and as such the appellant has to apply for the certified copy of the Arbitral Award.

8. The Supreme Court of India in Suo Moto Writ Petition (C) 3 of 2020 by order dated 23.03.2020 extended the period of limitation with effect from 15.03.2020 till further orders.

9. Subject objections under section 34 of the Arbitration Act were filed on 23.01.2021. It was contended by the appellant that the entire period w.e.f. 15.03.2020 till 23.01.2021 was liable to be excluded while computing limitation.

10. Section 34(3) of the Arbitration Act stipulates as under:

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

11. Section 34(3) of the Arbitration Act stipulates that application for setting aside of the award the application for setting aside of the award has to be made within three months from the date on which the party making that application had received the arbitral award and if the applicant was prevented by sufficient cause from making the application within the said period of three months within a further period of thirty days, but not thereafter.

12. As per the appellant, he received the physical copy of the award only on 04.06.2020. However, a soft copy of the award was received by the Appellant on 20.11.2019 by email. The three month period from the date of receipt of the soft copy expired on 20.02.2020. The further thirty day period would have expired on 21.03.2020 but the period of limitation was suspended by the Supreme Court in *Suo Moto Writ Petition (C) 3 of 2020* with effect from 15.03.2020. Objections were filed on 23.01.2021.

13. The Trial Court in the impugned judgment referring to the order of the Supreme Court in *Suo Moto Writ Petition (C) 3 of 2020* has held that the period from 15.03.2020 to 14.03.2021 is liable to be

excluded and has categorically held that the objections filed on 23.01.2021 have to be treated as moved within a period of 120 days.

14. However, the trial court has held that the appellant has not been able to show that he was prevented by a sufficient cause from moving the application within the original period of limitation of 90 days. Trial court has held that the period of 90 days expired on 20.02.2020 prior to any restrictions imposed on international flights on account of outbreak of pandemic.

15. In my view the Trial court has taken a hyper technical view of the provisions of the statute and the explanation given by the appellant for the delay. Section 34 provides for a period of three months to file objections and then a further period of 30 days subject to the applicant showing sufficient case for not filing the objections within three months.

16. It is not in dispute that Appellant was not in the country till 29.02.2020. Thereafter he was quarantined as per the advisory of the Government and a lockdown was imposed in the country. WHO had declared novel corona virus Covid-19 as a worldwide pandemic on 30.01.2020.

17. The rationale given by the Trial Court, that appellant has to explain as to how he was prevented from filing the objections within

the original period of 90 days and as to why he did not advance his flight and return earlier, is not sustainable.

18. Appellant has explained the circumstances as to why he could not file the objections within time. He was not in the country and on his return was quarantined and thereafter a nationwide lockdown was imposed. The Trial court has already held that the objections have been filed within the period prescribed by the Proviso to Section 34(3) i.e. within 30 days beyond the three month period.

19. In my view the explanation given by the appellant amounts to sufficient cause for not filing the objections within the prescribed period of three months.

20. Accordingly, the objections filed under section 34 of the Arbitration Act are held to be within time in terms of the Proviso to Section 34(3) of the Arbitration Act.

21. The impugned order dated 07.08.2021 is accordingly set aside. The objections are restored to their original number on the file of the Trial Court.

22. Parties shall appear before the Trial Court on 17.05.2022 for further proceedings.

MAY 04 , 2022/HJ

SANJEEV SACHDEVA, J.