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A.No.867 of 2023
in A.No.350 of 2023
in Arb.O.P.Dr.No.77291 of 2022

KRISHNAN RAMASAMY, J.

The present Application has been filed by the applicant to set aside the order dated 01.02.2023 passed by the learned Master in A.No.350 of 2023 in Arb.O.P.DR.No.77291 of 2022.

2.Learned counsel appearing for the applicant would submit that an application was filed before the learned Master seeking to condone the delay of 109 days in representation of Arbitration Original Petition, which was returned due to certain defects. The learned Master, by his order dated 01.02.2023, observed that under Section 34(3) of the Arbitration and Conciliation Act, an application cannot be filed after 120 days. The learned Master, in paragraph No.10 of the order, has passed the order as under:-

"10.The object of the provision itself is to control the period to file the petition under Section 34 of the arbitration and Conciliation Act within 120 days and not thereafter. If the petition under section 34 of the Arbitration and Conciliation Act 1996 is returned for defects, it is the duty of the petitioner to represent the same



within the time fixed by the Court or 120 days as stipulated in the Act whichever is maximum. The petitioner cannot be permitted to keep the returned case papers in his custody and represent the same according to his whims and fancies. If this kind of delay is condoned mechanically treating the same as delay in representation, definitely it will ruin the ADR mechanism."

3.The condonation of delay in re-presentation is not within the scope of Section 34(3) of the Act. The period mentioned in Section 34(3) of the Act for challenging the award would not apply for the re-presentation of the Original Petition, which was already filed within the period of limitation along with full Court fee. The Hon'ble Apex Court in the case of ***Northern Railway vs. Pioneer Publicity Corporation Private Limited*** reported in ***(2017) 11 Supreme Court Cases 234*** has categorically held that Section 34(3) of the Act has no application in re-filing the petition but only applies to the initial filing of the petition under Section 34 of the Act. The relevant portion of the above referred order is extracted hereunder:

“4.We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act.



It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of extensions, it would amount to re-filing.”

4.Considering the submission made by the learned counsel appearing for the applicant and in view of the law laid down by this Court and the Hon'ble Apex Court in the above referred case, this Court is of the view that the Master has misconstrued the application, where Section 34(3) of the Act is not applicable. In the present case, there is a delay of 109 days in representation. Admittedly, the applicant has paid the entire Court fee and for the purpose of technical reasons, it was returned. If the Court is convinced for condoning the delay in representation, it can be condoned. The findings of the learned Master that the petitioner cannot be permitted to re-present the application beyond 120 days is not acceptable.



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5. Being satisfied with the averments made in the affidavit filed in support of the application, this Court feels that the delay needs to be condoned and hence, inclined to allow the present application.

6. Accordingly, the order passed in A.No.348 of 2023 in Arb.O.P.DR.No.77291 of 2022 dated 01.02.2023 is set aside and this Application is allowed.

7. The Registry is directed to number the Original Petition, if it is otherwise in order.

14.02.2023
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