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

% *Date of decision: 14th September, 2023*

+ **FAO(OS) (COMM) 129/2023, CM**
APPL.Nos.33304/2023,33306/2023 & 33307/2023

UNION OF INDIA

..... Appellant

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Poonam Shukla, Ms. Reba Jena Mishra & Mr. Vipul Pathak, Advocates.

versus

M/S PRAGATI CONSTRUCTION CONSULTANT Respondent

Through: Mr. Vivekanand & Mr. Abhishek Semwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present **Appeal under Section 13 of the Commercial Courts Act, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with Section 37(1) (B) of the Arbitration and Conciliation Act, 1996** (*hereinafter referred to as the 'Act, 1996'*) has been filed to set aside the impugned Judgment and Order dated 08.05.2023 dismissing the Objections under Section 34 of the Act, 1996 by the learned Single Judge on the ground of limitation.

2. The respondent was awarded the work for 'construction of printing press hall, training centre and other allied works in connection with modernization of printing press at Shakurbasti, New Delhi' pursuant to a tender bearing No. 1-Aces/Tender/SSB/65 dated 4th April 2011 floated by



the petitioner/appellant. Disputes arose between the parties and the respondent invoked the arbitration clause. The learned Arbitrators were appointed to adjudicate the disputes between the parties on 26.05.2014. The parties initiated the adjudication process and statement of facts was filed on 30.10.2014. The impugned Award was passed on 24.02.2018.

3. Aggrieved by the Award, the appellant approached Tis Hazari Courts and filed its Objections under Section 34 of the Act, 1996 on 30.05.2018. An Objection was taken by the respondent that the value of the petition was beyond the pecuniary jurisdiction of the learned District and Sessions Judge. Consequently, in view of the objection taken, the appellant withdrew his petition so filed.

4. Thereafter, the Objections under Section 34 of the Act were filed before the learned Single Judge who considered the preliminary objection of the respondent that the Objections were barred by limitation and observed that the Objections under Section 34 of the Act, 1996 were filed beyond the period of 120 days as provided under Section 34(3) of the Act, 1996. The delay in filing the objections was of 12 months for which there was no explanation and was explicitly in contravention of the mandate of Section 34(3) of the Act, 1996. Thus, the objections were dismissed as barred by limitation.

5. Being aggrieved, the present Appeal has been preferred.

6. **Submissions heard.**

7. Learned counsel on behalf of the appellant has contended that the impugned Order suffers from patent illegality and is against the law as the period for which the Objections were pending before the Court not having jurisdiction, has not been excluded in accordance with Section 14 of the



Limitation Act, 1963.

8. The only moot aspect for determination is whether there is any patent illegality in dismissal of Objections under Section 34 of the Act, 1996 on the ground of barred by limitation.

9. In order to appreciate the merits of the contentions raised by the learned counsel for the appellant, it is pertinent to refer to Section 34(3) of the Act, 1996 which provides for period of filing of the Objections and reads as under:-

“34. Application for setting aside arbitral award. —

...

(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....”

10. According to Section 34 of the Act, 1996, the aggrieved party has a period of three months as a matter of right for filing the Objections under Section 34 of the Act, 1996. However, the Proviso to Section 34(3) gives a further window of 30 days which can be condoned if the court is satisfied with the reasons for delay.

11. The appellant has claimed that its Objections were well within the time and has explained the same in the following manner:-



SL.	Particulars	Number of days	Number of Days
A	Award received on 27.02.2018 To Filing of Objection Petition under Section 34 before this Hon'ble Court on 18.03.2019		384 days
B	<u>Less</u> the period between the date of filing of application under Section 34 in Tis Hazari Court on 26.05.2018 To The date of withdrawal of application on 16.02.2019 granting liberty to file fresh application under Section 34	266 days	
C	<u>Less</u> period between the date of order dated 16.02.2019. To Receipt of certified copy of the order on 02.03.2019	14 days	
D	Total Number of Days	280 days	104 days

12. Essentially, the contentions raised on behalf of the appellant has some merit since the time for which the Objections were pending before the learned District and Sessions Judge which did not have the pecuniary jurisdiction, was liable to be excluded under Section 14 of the Limitation Act, 1963 which reads as under:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.— (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of



first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

13. Section 14 of the Limitation Act, 1963 thus provides that while computing the period of limitation, the period for which the proceedings are pending in a Court lacking jurisdiction or due to other cause of like nature, has to be excluded.

14. As explained on behalf of the appellant, the application under Section 34 of the Act, 1996 was pending in Tis Hazari Courts from 26.05.2018 till 16.02.2019 i.e. for 266 days which have to be excluded while calculating the limitation. The appellant had applied for the certified copy of the order dated 16.02.2019 which took 14 days and this period is also liable to be excluded. In all, the time taken for filing the Objections from the date of Award was 384 days from which 280 days had to be excluded and the



Objections have been filed after a delay of 104 days.

15. Admittedly, the Objections have been filed beyond a prescribed period of three months from the date of the Award as prescribed under Section 34(3) of the Act, 1996. However, the Proviso to Section 34(3) of the Act, 1996 further provides that another 30 days may be allowed provided the Court is satisfied that the applicant was prevented by “sufficient cause” from making the application within the prescribed period of three months. The appellant did not seek the benefit of Proviso to Section 34(3) of the Act, 1996 and did not file any application for extension of limitation.

16. Section 5 of the Limitation Act, 1963, though not applicable in this case, is *pari materia* to the Proviso to Section 34(3) Act, 1996 as they contain a similar pre-requisite for Condonation of Delay. The Apex Court in Sesh Nath Singh and Anr vs Baidyabati Sheoraphulli Co-operative Bank Ltd, (2021) 7 SCC 313 addressed the question of whether it is mandatory to file an application under Section 5 of the Limitation Act, 1963 for a court to grant relief under the said Section. It was observed that *had such an application been mandatory, Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay.* It was thus concluded, that the court has discretion to condone the delay without a formal application; however, such a relief



cannot be claimed as a matter of right, by an applicant, without making out any grounds seeking condonation.

17. Applying the same logic under Section 34(3) of the Act, 1996, an additional delay of 30 days can be condoned by a court even without any formal application, provided sufficient cause is disclosed or explained for delay which could also have been done by separately filing an application seeking condonation of delay. However, such a remedy cannot be claimed as a matter of right.

18. The Apex Court in Union of India Vs. Popular Construction, (2001) 8 SCC 470 observed that the legislative intent of providing a strict and non-flexible limitation period should not be defeated by condoning the delay without sufficient cause. The time limit prescribed under Section 34 is absolute and inextensible by resorting under Section 5 of the Limitation Act.

19. In Simplex Infrastructure Ltd. Vs. Union of India, 2019(2) SCC 455, the Apex Court interpreted the words “*but not thereafter*” in Section 34(3) of the Act, 1996 and held that not a day beyond 120 days from the day of receipt of the Award can be condoned by the Court. The limitation period of 3 months plus 30 days is inelastic and inflexible and any delay of even one day beyond this period cannot be condoned by the Court.

20. Admittedly, the Objections have been filed beyond 3 months. The benefit of additional 30 days could have been availed by the appellant under Proviso to Section 34(3) of the Act, 1996, but unfortunately, no explanation whatsoever has been given. As already discussed, this benefit of additional 30 days does not enure automatically sans any explanation. While the appellant sought condonation of delay in refiling the Appeal, but unfortunately the Appeal missed “*the woods for the trees*” by failing to give



any reason to explain the delay beyond 3 months. Though the Objections under Section 34 of the Act, 1996 were filed in 104 days but the benefit of Proviso to Section 34(3) of the Act, 1996 cannot be granted to the appellant as a matter of right as no explanation whatsoever had been given for condonation of delay beyond 3 months under Section 34(3) of the Act, 1996.

21. We therefore, find no ground to interfere with the impugned Order dismissing the Objections on the ground of limitation. The Appeal is hereby, dismissed.

22. The pending applications, if any, also stand disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 14, 2023

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