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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision : 06.05.2024*+ **FAO(OS) (COMM) 89/2024****COUNCIL OF SCIENTIFIC AND INDUSTRIAL
RESEARCH THROUGH THE INDIAN INSTITUTE
OF PETROLEUM**

..... Appellant

Through: Mr. Narender Hooda, Sr. Advocate
with Mr. Jayesh Urmikrishnan, Mr.
Bhuvnesh Satija, Mr. Bhavya Lamba,
Ms. Vibhooti Malhotra and Mr. Udit
Sharma, Advocates.

versus

M/S ECOCARE BIOLUBE INDIA PRIVATE LIMITED

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)****CM APPL. 26838/2024 (Exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

FAO(OS) (COMM) 89/2024 & CM APPL. 26837/2024 (Stay)

3. The appellant has filed the present appeal impugning the order dated 23.02.2024 passed by the learned Single Judge, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) was set aside and a challenge to Arbitral Award dated 25.04.2019 (hereafter *the impugned award*) was rejected.



4. The appellant who was the respondent before the Arbitral Tribunal claims that he had received a copy of the impugned award on 16.06.2019. The appellant had filed the aforementioned application [O.M.P. (COMM) 15/2020] on 05.09.2019. The said filing was within the period of limitation. However, the learned Single Judge has held that the application filed on 05.09.2019 is required to be considered as a *non-est* filing on account of various defects and inadequacy of the said application. The record indicates that (i) only 33 pages were filed and the same were not bookmarked or paginated; (ii) Court fee was not paid; (iii) the value of pecuniary jurisdiction was not mentioned; the application was not accompanied by an attested affidavit; (iv) copy of the impugned award, which was sought to be assailed was not filed; (v) *Vakalatnama* was not filed; (vi) power of attorney was not signed; the application was not accompanied by a statement of truth as was mandatory. The filing therefore could not be entertained.

5. The said application was marked as defective and was returned for re-filing by the Registry of this Court on 16.09.2019. Thereafter, the appellant re-filed the said application on 23.11.2019. The application alongwith the documents now spanned over 292 pages as against 33 pages filed earlier.

6. The learned Single Judge was of the opinion that since the application filed on 23.11.2019 was beyond the period of 3 months and additional 30 days from the date of the receipt of the impugned award, the same was barred by limitation and the delay was beyond the period that could be condoned by the Court under the proviso Section 34 (3) of the A&C Act.

7. The limited controversy to be addressed is whether the application filed on 23.11.2019 was required to be considered as a fresh filing or to be considered as a re-filing of the application filed earlier.



8. The learned Single Judge has held that since the initial filing on 05.09.2019 was *non-est*, the application filed on 23.11.2019 was required to be construed as the appellant's first application assailing the impugned award.

9. It is not disputed that the application filed on 05.09.2019, was not accompanied by an affidavit, a *Vakalatnama*, or a copy of the award. In addition, it was also not supported by an affidavit of truth, as required.

10. As stated above, the original petition filed by the appellant was only 33 pages. On an overall consideration of the aforesaid defects, the said filing was clearly inadequate and was rightly considered as *non-est*. The said issue is covered by the decision of the coordinate bench of this Court in *Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises and Megha Engineering and Infrastructure Limited*; Neutral Citation No. 2023:DHC:135-DB.

11. The appeal is unmerited and accordingly dismissed. Pending application also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 06, 2024

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Click here to check corrigendum, if any