



2024:DHC:8791-DB



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

Date of decision: 12.11.2024

+ **FAO (COMM) 137/2024, CM APPL. 40513/2024-Stay, CM 65899/2024-By appellant seeking ad-interim ex-parte stay of order dt. 07.10.2024.**

NATIONAL HEALTH AUTHORITY

.....Appellant

Through: Mr. Sushil Kumar Pandey, SPC with
Ms. Richa Pandey, Adv.

versus

M S INTERMARC

.....Respondent

Through: Mr. Prasouk Jain, Ms. Shalini Nair
and Mr. Rohan, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act') seeks to assail order dated 07.05.2024 passed by the learned District Judge, Commercial Court, Patiala House Courts, New Delhi in OMP (Comm.) 121/2023.
2. Vide the impugned order, the learned Trial Court has rejected the application preferred by the appellant under Section 34 (3) of the Act for



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setting aside of the arbitral award dated 21.02.2023 on the sole ground of the same having been filed beyond the period of limitation as provided under the Act.

3. The brief factual matrix as emerging from the record shows that the appellant is a Government body under the aegis of the Ministry of Health and Welfare, Government of India and the respondent is a contractor who was awarded the contract for renovation of the office of the appellant in the Jeevan Bharti Building, Connaught Place, New Delhi.

4. On 19.08.2019, the appellant issued a tender inviting bids for renovation of its office at the third floor of the said Jeevan Bharti Building. The respondent, being the lowest bidder was awarded the contract for “Refurbishment and Renovation of approx. 10235 Sq. Fts.” vide agreement dated 28.11.2019 (hereinafter referred to as ‘Contract’). The value of the entire contract was initially fixed at Rs.3,65,00,000/- but was later reduced to Rs. 3,14,95,840/- and the work was to be completed within a period of 80 days, i.e. by 16.02.2020.

5. As per the appellant, since time was an essence of the contract, it was agreed that in case the work was not completed by the respondent within the agreed 80 days, the appellant would be entitled to liquidated damages of Rs.5,00,000/- per day, a term, which was also encapsulated in clause 6 of the Contract. As the work, which commenced on 28.11.2019, was completed on 25.02.2020 there was a delay of eight days and consequently the appellant was entitled to deduct an amount of Rs. 40,00,000/-, by way of liquidated damages. However, as the building was closed from 01:00 p.m. on 25.01.2020 and on 26.01.2020 i.e. for 1½ days, on account of Republic day,



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liquidated damages of Rs. 32,50,000/- were levied on the respondent on account of the 6½ days delay as per clause 6.2.3 of the Contract.

6. This resulted in invocation of arbitration by the respondent, and upon conclusion of the arbitration proceedings the learned Arbitrator vide arbitral award dated 21.02.2023 (hereinafter referred to as 'Award') awarded a sum of Rs. 35,53,500/- in favour of the respondent.

7. Being aggrieved by the Award, the appellant filed an application under Section 34 of the Act before this Court on 03.05.2023 only to be subsequently withdrawn on 03.07.2023 for want of pecuniary jurisdiction *albeit* with liberty to move an appropriate application before the appropriate Court. It is then that the appellant after waiting for over two months chose to file a fresh application under Section 34 of the Act before the learned Trial Court i.e., the District Judge, Commercial Court, Patiala House Courts, New Delhi on 05.09.2023.

8. It is this application, filed by the appellant, which has been rejected under the impugned order by the learned Trial Court by holding as under:

"11. It is not in dispute that the petitioner received the award on 21.02.2023 exactly 71 days after the receipt of award, filed a petition under Section 34 of the Act before Hon'ble High Court of Delhi on 04.05.2023. On 03.07.2023, Hon'ble High Court of Delhi dismissed as withdrawn the petition for want of jurisdiction and on 05.09.2023, the respondent filed instant petition before this court for setting aside arbitral award. After the order of dismissal as withdrawn of the petition before Hon'ble High Court of Delhi, it transpires that petitioner took almost 63 days (excluding the date of 03.07.2023) in filing the instant petition. Thus, even if the petitioner is given benefit of the provisions of Section 14 of the Limitation Act, in respect of the period spent in pursuing the proceedings before Hon'ble High Court of Delhi, it is evident from record that petition under Section 34 of the Act was filed by the petitioner much beyond the outer period of 90



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days (plus 30 days) i.e. on 134th day. The argument of the petitioner that the delay of 14 days is attributed to the fact that the department took considerable time for necessary approvals and it was a time consuming process for obtaining permission etc., is without any substance as it is well settled that administrative difficulties would not be a valid reason to condone a delay above and beyond the statutory period under Section 34 of the Act. The petitioner's explanation in the application as well as the reply to the application is perfunctory and vague. The petitioner has simply made bald averments that repeated objections were flagged by Hon'ble Delhi High Court's Registry, however, it is prima facie observed that incomplete filings with material/fundamental defects which were held onto and lackadaisically cured by the petitioner would not render extension of limitation. Even otherwise, the period of limitation 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. (reliance is placed on Simplex Infrastructure Limited v/s Union of India, 2019 (2) SCC 455, Union of India v/s Popular Construction 2001 (8) SCC 470, Union of India v/s M/s Panacea Biotech Limited, FAO(OS) (Comm)-81/2020, pronounced on 19.12.2023).

12. In view of the discussions made above, the application under Section 34 (3) of the Act filed by the petitioner for setting aside the arbitral award dated 21.02.2023 was beyond the mandatory period of limitation permitted under the Act of 1996. Hence, the same cannot be entertained being barred. As consequence thereof, the petition under Section 34 of the Act is dismissed. Parties are left to bear their own costs. File be consigned to record room."

9. Being aggrieved, the appellant has approached this Court by way of the present appeal. The primary submission of the learned counsel for the appellant is that once this Court granted liberty to the appellant to file a fresh application before the competent court, the appellant could file the same within the prescribed period of 90 days, which was extendable by 30 days for which purpose time was to be reckoned w.e.f. 03.07.2023 i.e., the date when the application was permitted to be withdrawn by this Court with liberty to file the same before the learned Trial Court. His plea being that



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since the appellant was permitted to file a fresh application before the learned Trial Court, the appellant was entitled to file the same within 90 days from 03.07.2023, which, as per law, was extendable on sufficient cause being shown by another 30 days. He therefore, contends that the fresh application under Section 34 of the Act which was filed on 05.09.2023 i.e. 64 days from the date of withdrawal of the earlier application, could not be said to be barred by limitation, which aspect the learned Trial Court has failed to appreciate.

10. Learned counsel for the appellant further submits that taking into account that the appellant is a Government agency, the delay, occasioned only on account of administrative reasons, ought to have been condoned by the learned Trial Court. He, therefore, prays that the impugned order be set aside and the matter be remanded back to the learned Trial Court for adjudication of the appellant's application under Section 34 of the Act

11. On the other hand, Mr. Jain, who appears on advance notice, supports the impugned order by contending that merely because the appellant was granted liberty by this Court to approach the competent Court having the necessary pecuniary jurisdiction; it did not entitle the appellant to wait for another 90/ 120 days before filing an appropriate application before the competent Court. He submits that, as the appellant had approached this Court on the 71st day from the passing of the Award, the appellant was left with only 19 days out of the prescribed period of 90 days to file the fresh application under Section 34 of the Act, therefore, the appellant was required to file the application on or before 21.07.2023. Even if the appellant were to seek condonation of delay under Section 34(3) of the



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Act, it was still required to file the same within the next 30 days i.e. within 48 days from 03.07.2023, which would end on 20.08.2023. However, the appellant, *admittedly*, approached the learned Trial Court after 63 days from the date of withdrawal of the application filed before this Court. Consequently, he submits that despite, the appellant being granted benefit of Section 14 of the Limitation Act, 1963 (hereinafter referred to as 'Limitation Act'), whereby entire period during which it's application remained pending before this Court i.e. 61 days, was excluded in computation of the limitation period, on the presumption that the appellant *prosecuted in good faith* the said application, the application before the learned Trial Court filed on 05.09.2023, was grossly barred by limitation and, was rightly rejected by the learned Trial Court.

12. Having considered the submissions of the learned counsel for the parties and perused the record, we may at the outset note that the parties are *ad idem* qua the aforesaid dates, they have however taken divergent stands, regarding the period to be excluded under Section 14 of the Limitation Act. While it is the appellant's case that the entire period from 21.02.2023 i.e. the date of the Award to 03.07.2023 i.e. the date when the appellant was permitted to withdraw its application erroneously filed before this Court, with liberty to approach the competent Court. The respondent, on the other hand, has urged that only the actual period during which proceedings remained pending before this Court could be excluded i.e. the period between 04.05.2023 to 03.07.2023 was excludable under Section 14 of the Limitation Act. Under these circumstances, it emerges that the only question we are called upon to adjudicate is whether the appellant was entitled to



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avail the benefit of Section 14 of the Limitation Act, and if yes, the period for which the appellant could claim this benefit.

13. In view of the timeline involved, we may note that the application under Section 34 of the Act before this Court being filed on 03.05.2023 i.e., after 71 days from the receipt of the Award, where after the same remained pending before this Court till 03.07.2023, when it was withdrawn with liberty to the appellant, to approach the competent Court. The appellant then filed a fresh application under Section 34 of the Act before the learned Trial Court, only on 05.09.2023 i.e., after 63 days from withdrawing the application before this Court.

14. In our considered view, after the appellant had withdrawn its application, under Section 34 of the Act, before this Court on 03.07.2023, all that it could claim was that the entire period during which its application, filed on 04.05.2023, remained pending before this Court, should be excluded under Section 14 of the Limitation Act, for computing limitation for filing of the fresh application, under Section 34 of the Act, before the learned Trial Court. The appellant could not, however, be permitted to urge that the withdrawal of its earlier application under Section 34 of the Act before this Court gave rise to a fresh cause of action or, to claim that it was once again entitled to the prescribed statutory period of 90/ 120 days w.e.f. 03.07.2023 for filing a fresh application before the learned Trial Court.

15. It is pertinent to note that mere liberty to file a fresh application before the competent Court does not amount to a fresh cause of action occurring in the appellant's favour. The relevant date(s) of the Award always remained unchanged, and therefore even after availing the benefit of



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the period between 04.05.2023 to 03.07.2023 under Section 14 of the Limitation Act, the appellant's application, on 05.09.2023, as filed before the learned Trial Court was barred by limitation. Therefore, despite the appellant being granted benefit of Section 14 of the Limitation Act for the entire period when its application under Section 34 of the Act remained pending before this Court, i.e. between 04.05.2023 to 03.07.2023, the fresh application, as filed before the learned Trial Court on 05.09.2023, which was filed on the 134th day was clearly barred under Section 34(3) of the Act.

16. We have also considered the appellant's plea that even if the application before the learned Trial Court, found to be barred for delay of 14 days, having been filed on the 134th day from the date of the Award, this short period ought to have been condoned as the appellant being a Government body, was required to take various administrative approvals before filing the fresh application before the learned Trial Court. We, however, find no merit in this plea of the appellant. It is trite law that the statutorily prescribed period of 120 days under Section 34(3) of the Act, including the 30 days condonable delay, can in no circumstance be extended and therefore even if we were to accept the appellant's bald plea of the delay being on account of administrative reasons, nothing much were to turn on this, as the period beyond the 120th day which ended on 20.08.2023. Consequently the application filed on the 134th day was clearly barred under Section 34(3) of the Act.

17. In view of the aforesaid, we are inclined to agree with the respondent that the learned Trial Court had rightly rejected the application, under Section 34 of the Act, filed by the appellant, as being barred by time.



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18. For the aforesaid reasons, we find no infirmity in the impugned order. Thus, the appeal, being meritless is, alongwith the accompanying applications, dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 12, 2024/ns