



2024:DHC:6686-DB



\$~39

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

%

Date of decision: 21.08.2024+ **FAO(OS) (COMM) 183/2024 & CM 47951/2024**

UIO THROUGH CPWD & ORS.

.....Appellants

Through: Mr Sushil Kumar Pandey, SPC with
Ms Neha Yadav, Advocate.

versus

M/S RAJ KUMAR TYAGI

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)****CM APPL. 47950/2024**

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 183/2024 & CM 47951/2024

2. This appeal is directed against the judgment and order dated 01.07.2024 passed by the learned Single Judge.

3. Via the impugned judgment and order, the learned Single Judge has dismissed the application, i.e., I.A. 31822/2024 preferred by the appellants, seeking recall of order dated 06.10.2021 and I.A. 31823/2024 seeking condonation of delay in preferring I.A. 31822/2024. The appellants sought condonation of delay of 930 days in moving the application for restoration.

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 02.09.2024
17:09:09***FAO(OS) (COMM) 183/2024******Page 1 of 5***



3.1 To be noted, *via* order dated 06.10.2021, the learned Single Judge dismissed-in-default the petition preferred by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, “1996 Act”] against the arbitral award dated 31.05.2012 and the interpretative award dated 30.06.2012 passed by the sole Arbitrator.

4. The learned Single Judge, *via* the impugned judgment and order, has discussed the aspect concerning delay, broadly, in two parts. The first part concerns the period between the time when the petition was instituted by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 [hereafter referred to as “1996 Act”] and its dismissal-in-default on 06.10.2021.

5. The learned Single Judge records that the parties were last represented on 13.12.2019, after which proceedings were adjourned to 18.03.2020. It appears that the petition was listed on 14.07.2021, and renumbered as O.M.P. (COMM) 149/2020 when neither party was represented on that date. When the matter was stood over to 06.10.2021, the parties went unrepresented; consequently, the petition was dismissed-in-default.

6. Insofar as the first part is concerned, the learned Single Judge, in paragraph 6 of the impugned judgment and order, has made certain observations.

7. For convenience, paragraph 6 is extracted hereafter:

*“6. I do not find this explanation very convincing. The protocols being followed from time to time during the pandemic were well publicised. The Department, being involved in such a large number of cases, can hardly claim to have been ignorant of those protocols. Further, even after the renumbering of the petition, the status of the case - including the order of the learned Joint Registrar dated 28.01.2020 -were available on the website of this Court, under the original case number. **It seems apparent that neither the Department,***

Signature Not Verified

Digitally Signed
By:DHARMENDR SINGH
Signing Date:02.09.2024
17:09:09



nor its counsel, attempted to inform themselves of the status of the case for this considerable period of time.”

[Emphasis is ours]

8. The second part concerns the period beginning from when the appellants claimed knowledge of the order dated 06.10.2021, i.e., August 2023.

9. Insofar as the second part is concerned, the explanation furnished by the appellants, according to the learned Single Judge, did not hold any water.

10. It was noticed by the learned Single Judge that the appellants took steps to apply for restoration of the petition, in and about December 2022, after receiving Court notice in the third week of August 2023 in the execution proceedings triggered by the respondent.

11. A government counsel was appointed on 28.08.2023 to move an application for restoration.

12. The appellants, instead of acting with due diligence and alacrity, took a further nine (9) months to move the Court with an application for restoration.

12.1 The application for restoration was filed only on 22.05.2024.

13. It appears that the process of filing the application commenced only on 27.04.2024 when the appellants started the process of appointing a new counsel.

14. In this context, the observations made by the learned Single Judge, being pertinent, are extracted hereafter:

*“10. The e-mail correspondence annexed to the application from the erstwhile learned counsel to the applicant- Department is, in my view, **insufficient to explain the further admitted delay of approximately nine months in filing an application for restoration.**”*

11. The applicant has annexed to the application an e-mail dated

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 02.09.2024
17:09:09



28.08.2023, by which the Department was requested to depute an official to instruct the learned erstwhile counsel. In the e-mail dated 22.04.2024, the erstwhile counsel refers to a communication dated 23.03.2023 [sic...23.12.2023], to the effect that no instructions have been received despite several communications. The file was thereafter returned to the Department.

12. In the course of hearing today, Mr. Pandey sought a passover to enable him to take instructions as to whether the Department had followed up with the erstwhile counsel at all between August, 2023 and April, 2024 for filing of the application for restoration. He candidly submits that there is no correspondence whatsoever addressed by the Department to the learned counsel. He has only referred to a communication of 23.12.2023, by which the learned counsel refers to meetings with the Department's representatives. Mr. Pandey has been instructed that there were, in fact, some e-mails addressed by the learned counsel to the Department during the aforesaid period, with regard to instructions in the enforcement proceedings. In fact, I am informed that the erstwhile counsel, upon whom all responsibility is sought to be pinned for the delay in filing of the restoration application, still represents the Department in the enforcement proceedings.

13. Even assuming in the Department's favour with regard to the period until August, 2023, the delay thereafter cannot be explained simply by blaming the erstwhile counsel."

[Emphasis is ours]

15. We are of the view that even if we were to accept the explanation for seeking condonation of delay concerning the first part, there is certainly very little by way of explanation except callousness and procrastination to justify the delay concerning the second part. The second part commenced from August 2023 and the application for restoration was, concededly, filed on 22.05.2024.

16. We find no error of law or fact in the reasons articulated by the learned Single Judge.

17. Given the aforementioned circumstances, we are not inclined to interfere with the impugned judgment and order.

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 02.09.2024
17:09:09



2024:DHC:6686-DB



18. The appeal is, accordingly, dismissed.
19. Pending applications shall stand closed.
20. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

AUGUST 21, 2024

rt

Signature Not Verified

Digitally Signed
By:DHARMENDER SINGH
Signing Date:02.09.2024
17:09:09

FAO(OS) (COMM) 183/2024

Page 5 of 5