$~22

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

\+ FAO (COMM) 1/2024

SUMEDHA NAGPAL ..... Appellant

Through: Mr. Puroshottam Sharma Tripathi, Mr. Rakesh Mohan and Mr. Sumit Kumar, Advs.

versus

AKASA FINANCE LIMITED & ANR. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **10.01.2024**

CM APPL. 189/2024

1. Exemption is allowed, subject to just exceptions.

2. Application is disposed of.

FAO (COMM) 1/2024

3. The appellant has filed the present appeal impugning the order dated 17.11.2023 passed by the learned Commercial Court whereby, the appellant's application (being OMP (COMM.) 23/2023 captioned ***Sumedha Nagpal v. M/s AKASA Finance Limited & Anr.***) was rejected on the ground that it was barred by limitation. The appellant had filed the said application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**'), impugning the Arbitral Award dated 17.04.2023

(hereafter '**the Arbitral Award**'). According to the appellant, she had received the said Arbitral Award on 29.04.2023. In terms of Section 34(3) of the A&C Act, the appellant could file an application for setting aside the Arbitral Award within a period of three months from the said date. Thus, the said application was required to be filed on or before 29.08.2023.

4. The appellant filed the aforesaid application on 28.08.2023 before the Commercial Court, South-West District, Delhi (Dwarka Court) although the jurisdiction to entertain the said application vested with the Commercial Court, West District, Delhi (Tis Hazari Court). The said defect was pointed out to the appellant on the date the application was filed – that is, on 28.08.2023 – along with other defects. Apparently, the appellant did not immediately accept that the Commercial Court, South-West District, Delhi would not have jurisdiction to entertain the application and proceeded to rectify the other defects.

5. On, 03.09.2023, the Registry of the concerned Court communicated its observation that the address mentioned in the Memo of Parties would not fall within the territorial jurisdiction of the Commercial Court, South-West District, Delhi. The appellant states that thereafter, on 06.09.2023, the appellant filed the application before the concerned court – District Judge (Commercial Court), West District, Delhi.

6. The learned Commercial Court concluded that even if the period during which the appellant had pursued the application before the Commercial Court, South-West District, Delhi is excluded under Section 14 of the Limitation Act, 1963 (hereafter '**the Limitation Act**'), the application would be beyond the period as stipulated under Section 34(3) of the A&C Act. The learned Commercial Court further observed that the court would

have no power to condone the period of delay beyond the period of thirty days after the expiry of the period of three months from the date of receipt of the Arbitral Award.

7. Section 34(3) of the A&C Act reads as under:

> *"Section 34(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."*

8. It is clear from the above that the application under Section 34 of the A&C Act is required to be filed within a period of three months from the date of receiving the arbitral award. In terms of the proviso to Section 34(3) of the A&C Act, the Court can, if it is satisfied that the applicant was prevented by sufficient cause from filing the application, condone a delay of thirty days beyond the said period. However, the Court cannot condone any further delay. The said issue is no longer *res integra*, and has been authoritatively settled by the Hon'ble Supreme Court in ***Union of India v. Popular Construction Co: (2001) 8 SCC 470***.

9. The learned counsel appearing for the appellant fairly states that there is a further delay of two days beyond the period of thirty days that can be condoned as the appellant had filed the application before the Commercial Court, West District, Delhi on 06.09.2023 instead of 04.09.2023. He further states that additional time was spent in verifying whether the address

mentioned in the Memo of Parties is outside the territorial jurisdiction of the Commercial Court, South-West District, Delhi. He also submits that there was a *bona fide* cause for the said delay.

10. This Court is not required to examine the reasons for the delay in filing the application as the Court would have no power to condone the delay beyond the period of thirty days after the expiry of period of three months as stipulated under Section 34(3) of the A&C.

11. There is no infirmity with the conclusion of the learned Commercial Court that even if the period between 28.08.2023 and 03.09.2023 is excluded, the appellant's application was filed beyond the period that can be condoned.

12. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 10, 2024
aks

Click here to check corrigendum, if any