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

+ **FAO(OS) (COMM) 70/2024**

PRAGATI CONSTRUCTION CONSULTANTSAppellant

Through: Mr. S.S. Sastry & Mr. Varun Sharma,
Advs.

Versus

UNION OF INDIA

.....Respondent

Through: Mr. Shashank Garg, Sr. Adv. with
Ms. Nistha Jain, Ms. Aradhya
Chaturvedi, Mr. Raghav, Mr. Hussain
Taqvi & Ms. Vidhi Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

19.02.2025

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1. The appellant has filed the present appeal impugning an order dated 23.02.2024 (hereafter *the impugned order*) passed by the learned Single Judge in OMP (COMM) No.77/2024.
2. The appellant had filed the said application under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an arbitral award dated 02.08.2023 (hereafter *the Award*).
3. The learned Single Judge concluded that the said application was beyond the period prescribed under Section 34(3) of the A&C Act for filing an application for setting aside the Award and the period of delay was beyond thirty days, which could be condoned by virtue of proviso to Section 34(3) of the A&C Act. The learned Single Judge accepted the contention that the application initially filed on 01.11.2023 was *non-est*. Thus, notwithstanding that the same had been filed within the period of three months, the same could not be considered as a valid application. The



learned Single Judge reasoned that the application, as originally filed, was of 111 pages as against the application spanning over 2151 pages, which was filed subsequently. It was also noted that neither the copy of the Award nor the *vakalatnama* was filed along with the first application. The subsequent application was filed beyond the period of three months from the date of receipt of the Award as well as additional thirty days, which could be condoned in terms of proviso to Section 34(3) of the A&C Act.

4. The applicant had filed the present appeal *inter alia* impugning the reasoning that the application under Section 34(3) of the A&C Act could not be treated as *non-est* merely because it was not accompanied by the Award, *vakalatnama* and other relevant documents. It was the appellant's case that since the application for setting aside the Award as initially filed, contained the grounds for setting aside the Award, the application could not be considered as *non-est*. According to the appellant, non-filing of Award and other documents could at best be treated as curable defects.

5. This court had noted that there were varying decisions in regard to the aforesaid issue. Since a larger bench was constituted to examine whether the defect of non-filing of statement of truth along with an application would be an incurable defect; this court also considered it apposite that the issue as highlighted above be also considered by the larger bench.

6. The issue raised is no longer *res integra* in view of the decision of the Full Bench of this court delivered on 07.02.2025. The Full Bench has, *inter alia*, held that if the application under Section 34(3) of the A&C Act is not accompanied by an arbitral award, which is sought to be set aside, the said application would require to be treated as *non est* because, absent the arbitral award, the grounds for setting aside the award as urged would not be



meaningful.

7. In view of the above, the impugned order cannot be faulted. We accordingly reject the present appeal.

VIBHU BAKHRU, J

TEJAS KARIA, J

FEBRUARY 19, 2025

‘gsr’

Click here to check corrigendum, if any