



2025:DHC:666-DB



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

Date of Decision: 31st January, 2025

+ **FAO (COMM) 33/2025**

**PUBLIC WORKS DEPARTMENT, GOVT OF NCT OF
DELHI**

.....Appellant

Through: **Mr. Dheeraj Kumar Singh and
Mr. Shiven Varma, Adv.**

versus

M/S SAGAR CONSTRUCTIONSRespondent

Through: **Mr. Sanjay Bansal, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 6226/2025 & CM APPL. 6227/2025

1. The present applications are filed by the appellant seeking the condonation of 64 days' delay in filing the appeal and 22 days' delay in re-filing the appeal, respectively.
2. For the reasons stated, the applications are allowed.
3. The delay of 64 days in filing the appeal and 22 days in re-filing the appeal is condoned.

FAO (COMM) 33/2025

4. This appeal has been filed by the appellant challenging the Order dated 19.07.2024 passed by the learned District Judge (Commercial Court-01), South District, Saket Court, in OMP(COMM) 18/2024, title *Executive Engineer PWD Govt. of NCT of Delhi v. M/s Sagar Constructions Through Sh. Subash Chand Saini*, dismissing



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the application filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, 'The Act') as being filed beyond the period prescribed under Section 34(3) of the Act and also beyond the maximum period by which the delay can be condoned under the said provision.

5. At the outset, we may note that the above position had been conceded by the learned counsel for the appellant before the learned District Judge.

6. As per the list of dates and events which has been filed along with the present appeal, the appellant contends that the copy of the Award dated 05.12.2022 passed by the learned Sole Arbitrator, had been received by the appellant on 13.12.2023. Thereafter, the file was processed for filing of the application under Section 34 of the Act, and as per the list of dates and events in the present appeal, it was filed on 09.05.2023, which is beyond the period prescribed under Section 34(3) of the Act and also beyond the maximum period by which the delay can be condoned. However, in the oral submissions made today, the learned counsel for the appellant submits that the application under Section 34 of the Act was filed before the Court of the learned District Judge, Commercial Court, District North West, Rohini Court, on 09.03.2023, which is within the period of limitation. He produced before us a printout from the e-court services portal, which shows the date of filing as 17.03.2023.

7. We shall not enter into this debate on whether the application was filed on 09.03.2023 or 17.03.2023 or 09.05.2023, as it may not



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have much relevance to the issue to be determined by this Court. The fact remains, that on 16.12.2023, the application filed by the appellant under Section 34 of the Act was returned to the appellant to be filed before the Court of Competent Jurisdiction, observing that the Court at North West District did not have the territorial jurisdiction to entertain the same.

8. The learned counsel for the appellant submits that this order was erroneous, as the Court did have the jurisdiction to entertain the application filed by the appellant. However, this again should not detain this Court inasmuch as the order dated 16.12.2023 is not in challenge before this Court. We also note that, in fact, the Order dated 16.12.2023 was passed on the submission of the learned counsel for the appellant who sought to withdraw the said application on the grounds that the Court lacked territorial jurisdiction. It was upon the submission of the appellant itself that the Court allowed it to be withdrawn with leave for it to be presented before the Court of Competent Jurisdiction.

9. Proceeding further, it is not denied that on return of the application, the same was presented before the Court of the learned District Judge, South District, only on 06.05.2024. Even if the benefit of Section 14 of the Limitation Act is extended to the appellant, and the period spent in pursuing the application under Section 34 of the Act, which earlier had been filed by the appellant before the Court at North West District is to be excluded, the application which has now been filed and has been dismissed by the impugned order, was filed



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much beyond the period prescribed under Section 34(3) of the Act and the maximum condonable period under the said provision.

10. The learned counsel for the appellant submits that the delay occurred because the copy of the Order dated 16.12.2023 was not uploaded on the website of the Court at North West District. He admits that this plea has not been raised in the present appeal. Even otherwise, it is not the case of the appellant that the appellant was not aware of the order or could not obtain a certified copy thereof in time. In fact, there is a delay of 64 days in the filing of the present appeal as well.

11. The learned counsel for the appellant has placed reliance on the Judgment of this Court in *Haji Banda Hasan vs M/s Gupta & Gupta Pvt. Ltd.*; 2019:DHC:4496, to submit that the strict rigour of Section 34(3) of the Act applies only to the initial filing of the application under Section 34 of the Act and not to the case of re-filing. There is no dispute on the said proposition, however, the present case is not the case of mere re-filing of the application after removing defects of filing. As noted hereinabove, the original application had been filed by the appellant in a court which lacked the Territorial Jurisdiction to entertain the same. It was returned in the exercise of powers akin to Order VII Rule 10 of the Code of Civil Procedure, 1908. Therefore, at best, the appellant would be entitled to the benefit of Section 14 of the Limitation Act for seeking an extension of the period of limitation. The application that was later filed by the appellant before the court in the South District, cannot be treated as a case of mere re-filing of the



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application.

12. Keeping in the above facts, we find no infirmity in the Impugned Order passed by the learned District Judge (Commercial Court), South District, Saket Court.

13. Accordingly, the appeal is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 31, 2025 / SU/kp

Click here to check corrigendum, if any