

(2013) 04 DEL CK 0158

In the Delhi High Court

Case No : CM No. 11151/2012 and 11152/2012 in FAO No. 62/1995

D.D.A.

APPELLANT

Vs

M/s. Prominent Electrical Works and Another

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0158

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—By way of this application (CM No. 11151/2012) the appellant seeks a review of the order dated 31.10.2011. Alongwith this application, an application (CM No. 11152/2012) seeking condonation of delay of 180 days in preferring this review petition has been filed. Notice has been served of the review application as also of the application for condonation of delay upon the respondent who stood duly served. None has appeared for the respondent.

2. A perusal of the application seeking condonation of delay shows that it is bereft of any particulars. No explanation let alone a justifiable explanation has been given for the inordinate delay of almost six months in preferring the review petition. The only explanation tendered in this regard is contained in para 3 of this application which reads herein as under:-

3. The said delay is occasioned by the fact that it took time by the Department to go through the records and detect the error regarding prayer "c". Immediately upon getting to know of the discrepancy, the matter was discussed within the Department and thereafter with the counsel conducting the matter. Hence, there was a delay in filing the present application for review.

3. In view of the legal pronouncement of the Supreme Court in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, , a government department is not to be treated as a separate entity qua a private

entity. The lethargy of a government department in shifting files from one table to the other has been held to be no excuse and the intent of the statute of limitation cannot be ignored; there is no separate law of limitation for public sector enterprises and public interest is also in preventing and pursuing stale claims; it has been observed that claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. The hon''ble Supreme Court has observed that it is in fact the right time to inform all the government bodies, their agencies and instrumentalities that unless they have a reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process; the government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments; the law shelters everyone under the same light and should not be swirled for the benefit of a few.

4. In view of the aforesaid pronouncement, such a plea is no more available to the appellant. CM No. 11152/2013 is without any merit; it is dismissed. On this ground alone the appeal being time barred is liable to be dismissed.

5. However, even on the merits the review application is liable to be dismissed. The case of the appellant before this Court is that vide order dated 31.01.1995 claim No. 1 and claim No. 4 had been remanded back to the learned Arbitrator and fresh Award dated 18.01.2000 had been pronounced; up to this point, the counsel for the petitioner has no quarrel. He further submits that on 31.01.1995, the learned Additional District Judge had also dealt with the counter claims of the petitioner; counter claim no. 1 had been upheld but counter claim No. 2 had been set aside. Submission being that this counter claim No. 2 should have been the subject matter of consideration in the fresh Award and this has not been done so.

6. Admittedly prior to this period this point has never been agitated. At the time when the order dated 31.01.1995 was passed it was only claim No. 1 and claim No. 4 which had been remanded back to the Arbitrator. There was no direction qua counter claim No. 2. In this background the question of review of the order dated 31.10.2011 does not arise as the order dated 31.10.2011 had only dealt with the factum that counter claims No. 1 and 4 which had been remitted back to the arbitrator and fresh Award having been pronounced thereafter, this petition has become infructuous.

7. Even on merits no ground for a review is made out. This review petition is wholly frivolous; it is accordingly dismissed.