
(2020) 01 DEL CK 0103

In the Delhi High Court

Case No : First Appeal From Order No. 10 Of 2020

Irrigation & Flood Control Department

APPELLANT

Vs

Naresh Kumar Gupta

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Limitation Act, 1963 — Section 5

Arbitration & Conciliation Act, 1996 — Section 34, 34(3)

Citation : (2020) 01 DEL CK 0103

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Shlok Chandra, Moni Cinmoy

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

CM APPL. 202/2020 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 203/2020 (condonation of delay) & CM APPL. 204/2020 (condonation of delay)

Issue Notice. Notice is accepted by learned counsel appearing for the Respondent.

Learned counsel for the respondent submits that the in view of the grounds stated he has no objection to condonation of delay provided a direction is

issued to the trial court to expedite the proceedings.

For the reasons stated in the applications and the fact that appellant has given day to day explanation of the delay that has occurred in filing of the

appeal and re-filing of the appeal, the applications are allowed. The delay of 105 days in filing the appeal and the delay of 5 days in re-filing the appeal

are condoned.

FAO 10/2020 & CM APPL. 201/2020 (stay)

1. Issue notice. Notice is accepted by learned counsel for the respondent. With the consent of the parties, the petition is taken up for hearing today.

2. Learned counsel for the appellant submits that on account of a clerical error copy of the application under Section 5 of the Limitation Act filed

before the trial court has not been placed on record. Photocopy of the application has been produced and the same is taken on record.

3. Learned counsel for the appellant submits that the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as

the Act) was filed with a delay of 30 days and in terms of proviso to Section 34(3), the Court has the power to condone the delay of 30 days.

4. Learned counsel for the appellant submits that the impugned order was passed ex-parte and did not take into account the grounds mentioned in the application under Section 5 of the Limitation Act filed before the trial court.

5. Learned counsel for the appellant submits that three successive counsels, who were appointed to file objections under Section 34 of the Act,

returned the file citing valid reasons because of which delay occurred in filing the objections under Section 34 of the act.

6. Appellant had filed objection under Section 34 of the Act, impugning award dated 01.08.2016. Objections were filed on 30.11.2016.

7. By the impugned order, trial court has dismissed the objections under Section 34 of the Act solely on the ground that same were filed beyond the statutory period of three months as prescribed under Section 34 of the Act.

8. Trial court relying upon the judgment of the Supreme Court in Union of India Versus Popular Construction Co. (2001) 8 SCC 470, held that the

Supreme Court has directed that the Court does not have the power to condone the delay beyond the period mentioned in Section 34 i.e. three months

and 30 days thereafter.

9. Award was passed on 01.08.2016 and the three monthsâ?? period, as stipulated under Section 34(3) of the Act, expired on 31.10.2016. Thereafter

under the proviso to Section 34(3) a delay of 30 days is condonable subject to condition sufficient cause is shown.

10. Objections under Section 34 of the Act were filed on 30.11.2016 i.e. within a period of 30 days from the expiry of three monthsâ?? period as

stipulated under Section 34 (3) of the Act.

11. The application under Section 5 of the Limitation Act was filed seeking condonation of delay of 30 days was really an application in terms of the proviso to Section 34(3) of the Act.

12. The grounds stated in the application are that one -â?" Ms. Sakshi Popli was appointed as a Government Counsel on 05.10.2016, however, on

19.10.2016 she returned the file on account of personal reasons stating that the parties were known to her personally. Thereafter, another Government

Counsel â?" Mr. Iram Majid was appointed as Government Counsel on 24.10.2016 but he returned the file on 26.10.2016 stating that he was

empanelled counsel in High Court and accordingly could not file the petition. Thereafter one â?"Mr. Brijesh Kumar Saini was appointed as a

Government Counsel, but he also returned the file by letter dated 17.11.2016 stating that he had been diagnosed with dengue fever and accordingly he

could not file the objections under Section 34 of the Act. Thereafter, Mr. Ramraghvendra Kumar was appointed as Government Counsel on

22.11.2016 to whom the file was transmitted on 23.11.2016 and he immediately drafted the objection and filed the same on 30.11.2016.

13. The reasons for delay, mentioned in the application seeking condonation, constitute sufficient cause.

14. I am of the view that the trial court has erred in not appreciating the reasons for delay mentioned by the appellant in the application seeking

condonation of delay and also the error in not noticing the delay period was covered under the proviso to Section 34(3) of the Act.

15. In view of the above, impugned order dated 25.03.2019 is set aside. The objections under Section 34 are restored to its original number. The

matter is remitted to the trial court for consideration of the objections on merit.

16. Trial court is directed to expeditiously consider the objections under Section 34 of the Act and dispose of the same in accordance with law.

17. Parties shall appear before the trial court for directions on 17.01.2020.

18. The appeal is allowed in the above terms.

19. Order dasti under signatures of the Court Master.