
(2013) 01 DEL CK 0015
In the Delhi High Court
Case No : OMP No. 13 of 2013

Mahanagar Telephone Nigam Ltd., Delhi	APPELLANT
Vs	
M/s. Prakash and Co. Construction Company	RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 197 DLT 772

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : H.S. Dahiya, for the Appellant; Siddharth Khattar, with Mr. Faizal Zafar and Mr. Rajmangal Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.

I.A. No. 256/2013 (for condonation of delay of 188 days in re-filing the petition)

1. The abovementioned objection petition has been filed by the petitioner u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, called the "Act") against Claims No. 1 to 16 awarded in favour of the respondent by Award dated 19th January, 2012 passed by the sole Arbitrator. The award was sent by the ICADR vide letter dated 14th February, 2012. It was received by the petitioner on 16th February, 2012. Along with the petition, the petitioner filed an application u/s 151 CPC for condonation of delay of 188 days in re-filing the petition. The first ground for such delay stated in the application is that the working of the chamber of the counsel for the petitioner was disturbed because of the unfortunate death of the son of his Associate, Ms. Anita Sharma, Advocate, due to which she did not join the office for four months. The second reason given by the counsel is that the other Associate, Mr. Rajinder Kaushik working in the office also stopped coming to the office towards the end of the month of May due to his personal reasons and he could join the chamber only in the beginning of October. The third ground given by the petitioner is that the counsel engaged the services

of a Steno, Ms. Sunita Sharma who was not very experienced to work on the computer. The typing work had to be redone as the work done was lost due to some problem in the computer. The fourth reason alleged in the application is that in the month of July, 2012, the brother-in-law of the counsel, Mr. Vinod Jain was diagnosed with tumor in the hip region of the type of causing blood cancer. It was also stated in the application that the wife of the counsel had passed away six years ago and due to such abnormal tragedies one after the other, the normal working in the chamber of the counsel could not take place, due to which it took such time to arrange and compile more than 100 pages in five volumes of the petition. Therefore, the prayer is made for condonation of delay of 188 days in re-filing of the petition.

2. The application is strongly opposed by the respondent. According to the respondent, the delay is not of 188 days, but 233 days and such delay in re-filing cannot be condoned.

3. The learned counsel for the respondent has referred the following judgments in support of his submissions:-

(i) Delhi Transco Ltd. and Another Vs. Hythro Engineers Pvt. Ltd., , the relevant paragraphs of which read as under:-

8. The Division Bench in Shree Ram Construction Co. (supra) (which, we may note has been upheld by the Supreme Court with the dismissal of the SLPs) in para 29 and 41 observed as follows:

29. Reliance on the decision in Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, to the effect that "justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold" is of no avail in the backdrop of the A&C Act which decidedly and calculatedly shuts off curial discretion after the expiry of thirty days beyond three months having elapsed from the date on which a copy of the Award had been received by the appealing party. In the context of the A&C Act, it appears to us that liberality in condoning delay in re-filing would run counter to the intention of Parliament which has employed plain language to facially prescribe a cut-off date beyond which there is no latitude for condonation of delay. And this is for very good reason. Across the Globe, it has been accepted that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business conflicts arise. We think it wholly impermissible to extend or expand the time for concluding judicial proceedings at the second stage, that is, that of re-filing, when this is impermissible at the very initial stage, that is, of filing objections to an award. It will be apposite to immediately recall the dicta of Union of India Vs. M/s Popular Construction Co., . We can do no better than reiterate the words therein - "the history and scheme of the 1996 Act supports the conclusion that the time-limit prescribed u/s 34 to challenge an award is absolute and unextendable by Court u/s 5 of the Limitation Act". This

very reasoning has also been clarified and followed in Chief Engineer of B.P.D.P./ R.E.O., Ranchi Vs. Scoot Wilson Kirpatrick India Pvt. Ltd., in these words:-

8. The decision in Union of India Vs. M/s Popular Construction Co., did not deal with specific issues in this case. In that decision it was held that in respect of "sufficient cause cases" the provisions of Section 34(3) of the Act which are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act"). The position was reiterated in State of Goa Vs. Western Builders, and also in Fairgrowth Investments Ltd. Vs. The Custodian, . There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act.

41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the refiling of the Objections. Since this delay crosses the frontier of the statutory limit, that is, three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D. Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing Counsel, namely, Ms Prem Lata Bansal. We have called for the records of OMP No. 291/2008 and we find that the Objections have not been signed by Late Shri R.D. Jolly but by Ms Sonia Mathur on 9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D. Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of refiling of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal. CM No. 5212/2009 is also dismissed.

10. It is in Shree Ram Construction Co. (supra) that the Court actually examined as to what is the magnitude of delay in re-filing, which the Court may tolerate and permit to be condoned in a given case. Obviously, there cannot be any hard & fast rule in that respect, and the Court would have to examine each case on its own facts & merits and to take a call whether, or not, to condone the delay in refiling the objection petition, when the initial filing of the petition is within the

period of limitation. However, what is to be borne in mind by the Court is that the limitation period is limited by the Act to three months, which is extendable, at the most, by another thirty days, subject to sufficient cause being disclosed by the petitioner to explain the delay beyond the period of three months. Therefore, it cannot be that a petitioner by causing delay in re-filing of the objection petition, delays the re-filing to an extent which goes well beyond even the period of three months & thirty days from the date when the limitation for filing the objections begins to run. If the delay in re-filing is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of more stringent norms while considering the application for condonation of delay in re-filing, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and where the re-filing takes place much after the expiry of the period of three months & thirty days and, that too, without any real justifiable cause or reason.

11. A perusal of the impugned order shows that the learned Single Judge has applied his mind to the facts of this case on the basis of the correct legal proposition laid down by the Division Bench in *Shree Ram Construction Co.* (supra). The learned Single Judge rightly observes that the appellant was highly careless in pursuing the matter of re-filing of objections and that the appellant had not been able to satisfy the Court that the delay in re-filing the objections was on account of bona fide reasons. He also observed that the delay was, in fact, on account of carelessness, inaction and negligence on the part of the appellant. The appellant had the benefit of a legal Department whose responsibility it was to see that the objections were filed within the period of limitation. It was also their responsibility to ensure that half baked objections are not filed and thereafter, in case any objection/defect is raised, the same is removed within the time allotted and to ensure that the same is re-filed as early as possible to safeguard their own interest.

12. In the present case, the objections are stated to have been misplaced by the appellant. In that event, the appellant should have taken appropriate steps at the earliest and not waited for 72 days. A reading of the appellant's application to seek condonation of delay shows that even though the objection petition had been misplaced after the same had been returned under defect by the Registry, the appellant did not take steps to reconstruct the same. It is only, by chance, that the appellant found the misplaced objection petition attached to another file,

and upon finding the same, re-filed the objection petition after removing the defects. The learned Single Judge has rightly observed that neither the affidavit of the junior Advocate (who allegedly misplaced the objection petition after taking it back under defect), nor the Clerk had been filed in support of the application. It is rightly held that condonation of delay in re-filing the objection petition in these facts would run against the intention of the Parliament and the statutory scheme under the Act. Moreover, there is no answer with the appellant to the reliance placed by the learned Single Judge on Rule 5, Chapter I, Part A of Vol. 5 of High Court Rules and Orders, according to which, the objections should have been refiled within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution.

(ii) Union of India Vs. M/s. Sunrise Enterprises, Panipat, , the relevant para reads as under:-

13. It appears that the Court has, in the matter of condonation of delay in re-filing the petitions u/s 34 of the Act, adopted a stricter scrutiny than it does while considering an application for condonation of delay filed under OMP No. 382 of 2006 Page 6 of 7 Section 5 of the Limitation Act. What weighs with the Court is the express legislative intent in Section 34 (3) of the Act, that the total permissible period within which an application can be permitted to be filed u/s 34 of the Act, is 90 days plus an additional 30 days. If the delay in re-filing the petition exceeds the above period, then the scrutiny becomes rigorous. Unless there is a satisfactory and credible explanation for the delay, the Court would be reluctant to condone it. Otherwise, the legislative object of not permitting the delay in the original filing beyond 30 days would get defeated.

(iii) Union of India (UOI) Vs. Harbhagwan Harbhajan Lal , the relevant paras read as under:-

5. The counsel for the respondent has basically stressed upon two arguments in support of the prayer for condonation of delay. The counsel firstly contends that since there were around 200 pages which required retyping therefore, a lot of time was taken for such re-typing. The second argument is that certain documents were dim and could not be re-typed and subsequently they were sent to the concerned department so that the same could be got re-typed by the concerned department. I may only note that in addition to the aforesaid two arguments, there appears to be a contention with regard to tagging of these objections with another matter. Though the counsel for the petitioner had not so argued, there appears to be a third ground taken in the rejoinder seeking condonation of delay on account of the papers being mixed up with another matter between the same parties.

6. A reference to the aforesaid objections which have been raised by the registry and the first two arguments of the counsel for the petitioner shows that the objections were clerical and administrative in nature which in my opinion, would require at best a period of four or five days for removal. The registry had in fact given one week for removal of the objections. To this period of one week, if we further add a reasonable period of time for getting the dim documents typed from the concerned relevant department, then, one may further add at the very best a period of two weeks. Taking a most liberal approach, it can be said that within a period of 30 days all the objections could have been and ought to have been removed as raised by the registry of this Court. As regards the averments that the papers got wrongly tagged, in my opinion the same lacks bona fides because no particulars of the date when the same got mixed up, by whom, and when the same was discovered, on which date and by whom, have not been mentioned in the rejoinder.

8. A Learned Single Judge of this Court (Rajiv Sahai Endlaw, J.) had an occasion to deal with this issue with regard to the condonation of delay in re-filing in the case reported as Gautam Associates Vs. Food Corporation of India, . The Learned Single Judge has referred to the various provisions of CPC 1908, Limitation Act 1963, and the rules of this Court with respect to filing and refiling and condonation of delay. The Learned Single Judge has also referred to various decisions of the Supreme Court and High Courts, including this Court, on the aspect of condonation of delay.....

10. The aforesaid facts therefore clearly disentitle the petitioner/applicant to seek condonation of delay in the facts of the present case. In fact, as held in the judgment of Gautam Associates, (supra) condonation of delay in a petition u/s 34 has to be viewed differently than the condonation of delay in other cases because if there is unnecessary liberalness in condoning delay, then, the ratio of the Supreme Court in the case of Union of India Vs. M/s Popular Construction Co., will be set at naught. Also, the object of arbitration is speedy and early determination of the disputes, and unnecessary latitude, although, inaction is quite clear from the record would frustrate, the intendment of the Arbitration and Conciliation Act, 1996 itself.

(iv) Gautam Associates Vs. Food Corporation of India, , the relevant paras read as under:-

33. In the present case, when the legislature has, as interpreted in Union of India Vs. M/s Popular Construction Co., purported to limit the time within which the petition u/s 34 can be preferred, if such huge delays in re-filing and for which there is no bonafide diligent explanation are to be condoned, it would run contrary to the mandate of the legislature. The effect is there to see in the present case itself. The award of 2002 remains unenforced till date.

34. In Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, also it was held that "it is well settled law that it is the duty of the court

to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act." It was further held that "the applicability of the provisions of the Limitation Act, therefore is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act (with which the court was concerned in that case) relating to filing of reference application to the High Court." Applying the said ratio to the present case also, it will be found that the law earlier laid down of the court being required to be liberal in condoning the delay in re-filing is found repugnant to the legislative intent of Section 34 (3) and the limitation provided therein cannot be defeated by condoning liberally the delays in re-filing.

35. This court recently in Union of India (UOI) Vs. Ogilvy and Mather Ltd. and Another, has also rejected an application for condonation of delay in re-filing the petition u/s 34 of the Act. In that case also the reason cited was of the illness of the advocate and which was not believed.

36. Though earlier, whenever delay on the part of advocate was the reason, the courts were lenient in condoning the same, the trend has changed. The present times are not of illiterate litigants who were solely dependent upon the advocate and his wisdom. The litigants, such as the petitioner in the present case who transact business of crores of rupees and who are more aware of their rights than an advocate, cannot hide behind the veil of lapse of the advocate. There is not a whisper as to what steps the petitioner took in between November, 2002 and May, 2003. In fact as aforesaid the application for condonation of delay is not even accompanied by any affidavit of the petitioner. Even if the file had got lost in the office of the advocate, there is no averment that the petitioner contacted the advocate during the said period or made attempts for tracing out the file or for filing of another set of papers in the court.

37. Thus no ground is found for condoning the delay. The application is dismissed.

4. Some dates are relevant for the purpose of deciding the present application, the details of which are given as under:-The date of award is 19th January, 2012. According to the petitioner, the award was received on 16th February, 2012. The petitioner filed its objections to the award on 15th May, 2012 i.e. within the period of limitation. However, the Registry raised certain objections on 16th May, 2012. The main objection raised by the Registry was about the Court fee to be paid on the awarded amount by the Arbitrator. All the objections were removed by the petitioner after more than seven months. The petitioner did not purchase the Court fee during this period. The remaining objections were very formal. The same could have been removed without any delay. Nature of the objections show that it was not necessary to apply personal intention of the counsel as those were very routine type of objections and the same could have been removed at the level of Junior Advocate or clerk. No doubt, this Court has great sympathy with the counsel who has suffered a lot due to the reasons stated in the application, but at the same time, the Rule of law has to be prevailed by the Court in view of special provisions of the Act, otherwise, the

very purpose of the scheme to challenge the award in the prescribed period would be defeated.

5. The petition was re-filed in the Registry on 29th November, 2012 and on subsequent dates, i.e. 6th December, 2012, 12th December, 2012, 19th December, 2012 and 4th January, 2013.

6. It is rightly held that condonation of delay in re-filing the objection petition in these facts would run against the intention of the Parliament and the statutory scheme under the Act. Moreover, there is no answer with the appellant to the reliance placed by the learned counsel for the respondent on Rule 5, Chapter "I", Part A of Vol. 5 of High Court Rules and Orders, according to which, the objections should have been refiled within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution.

7. The moment it becomes fresh filing, then under the settled law after the expiry of prescribed period, the delay cannot be condoned on any ground. The maximum period of 30 days is provided under Rule 5, Chapter 1, Part A of Vol. 5 of the High Court Rules and Orders for removing the objections by re-filing of the petition. In the present case, it was not done. It was filed after the expiry of 233 days.

8. In the present case, it took the petitioner about seven months and 20 days to remove all the objections raised by the Registry, as three months period already expired on 15th May, 2012 as per the case of the petitioner. There is a purpose for providing the prescribed period for filing the objections u/s 34 of the Act, i.e. after filing the objections till the disposal of the same, there is automatic stay of the operation of award. No execution u/s 36 is maintainable if the objections are pending disposal. Thus, the provisions of Section 34 of the Act on the issue of period of time as prescribed have to be applied strictly in order to maintain the entire scheme of the Act, otherwise, it is very difficult for any Court to judge that for how much period or under which ground or sufficient reason, the delay would be condoned and under those circumstances, there would be no end of confusion or to draw the line. Parties who are seeking condonation of delay in filing the objections and delay in re-filing must understand that the Courts are dealing with the statutory provisions of the Act and not the matters of civil cases where different thoughts are applied when such delay happens and sufficient cause is shown.

9. This Court is of the view that for the purpose of limitation of period, the provisions of Section 34 of the Act are mandatory. The delay of this nature cannot be condoned. The application is, therefore, dismissed.

OMP No. 13/2013

In view of the dismissal of the application for condonation of delay in re-filing, the objection petition is itself barred by time. The same is accordingly dismissed.