

(2001) 07 DEL CK 0102

In the Delhi High Court

Case No : IAs 7819 and 8531 of 2000 in OMP 202 of 2000

Union of India

APPELLANT

Vs

Mohanlal Harbanslal Bhayana and Co.

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)
Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5, 8

Citation : (2001) 07 DEL CK 0102

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Ashok Bhasin and Atul Batra, for the Appellant; R. Rajappan, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—M/s Mohanlal Harbanslal Bhayana & Co., hereinafter described as resonant were awarded a contract for construction of Doordarshan Bhawan Phase II, Mandi House besides other works. There were disputes between the parties and the respondent requested for appointment of the arbitrator. The arbitrator was appointed and ha submitted the award Union of India has filed objections/petition u/s 34 of the Arbitration and Conciliation Act, 1996 (for short the Act) to the award dated 23rd November, 1999 and the modified award of 10/13th February, 2000.

2. Along with the said objection/petition an application ha ben preferred u/s 34(3) of the Act seeking condensation of delay in filing of the above said objections. It has been pleaded that there has been some delay in filing of the objections. This is for the reason that after the award, the learned arbitrator had modified it on 10th February, 2000. It was signed by the arbitrator in 13th February, 2000. The award was received in the office of the Executive Engineer (Civil) on 16th February, 2000 and the same was went for the opinion of the

Government Counsel. The Senior Government Counsel gave the opinion on 2nd March, 2000 and it was sent to the Ministry for obtaining advice of Ministry of Law. On 9th May, 2000 the opinion was received and it was sent to the litigation section of the Delhi High Court on the same date. Some time was taken in preparing the objections and hence occurred the delay. It is prayed that delay as such should be condoned.

3. Another application has been preferred u/s 5 of the Limitation Act read with Section 151 of the CPC for condensation of delay in re-filing of the objection (IA 8531/2000). It has been pleaded that after the objections were filed the same was returned. It was received back by the clerk of the counsel for the Union of India but it got misplaced. When the department enquired from the counsel about the next date, the counsel was able to trace the file. The delay in re-filing Therefore occurred and is claimed to be condoned.

4. In the reply so filed both the petitions have been contested. It is denied that there are sufficient grounds for condensation of delay or for re-filing of objections. As per the respondent there are no sufficient cause or grounds for condensation of delay. The objections were filed on 25th May, 2000. It was returned to the petitioner on 27th May, 2000. The petitioner took 2-1/2 months for re-filing and thus there is no ground in this regard so alleged by the petitioner. Even it is claimed that the contention that the file had been misplaced also is not correct. By this common order both the above IAs. 7819 and 8531/2000 can conveniently be disposed.

5. Section 34(3) of the Act provides the period for limitation within which an application can be filed for setting aside of the award. It is three months from the date of receipt of the arbitral award or if request has been made u/s 33 from the date on which such request has been disposed of. There is a proviso to sub-section (3) to Section 34 which permits that court to condone the delay if there is a sufficient cause for making the application beyond three months but 30 days is the outer limit in this regard. In other words, after the expiry of 30 days delay even cannot be condoned. In the present case in hand, the review petitions had been filed and was finally disposed of on 10th February, 2000. Objections have been filed on 25th May, 2000 i.e. to say after the expiry of the three months period. The short question Therefore that arises for consideration is that whether there was sufficient cause for making the application beyond three months. The expression "sufficient cause" as such has not been defined. Even it is not defined in the Limitation Act because necessarily facts of each case has to be examined on its own merit. By the large the meaning of sufficient cause must be drawn as it exists in Section 5 of the Limitation Act, 1963. This question as to what would be the meaning of sufficient cause came up for consideration before the Supreme Court in the case of Shakuntala Devi Jain Vs. Kuntal Kumari and Others, . The Supreme court held that the expression sufficient cause should be given a liberal meaning and in this regard while approving the earlier decision of the Madras High Court held:

7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in re-filing the appeal with the certified copy should be condoned u/s 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay the Court may in its discretion condone the delay. As laid down in *Krishna v. Chathappan*. 1890 13 Mad 269 "Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

6. Same view was repeated in the subsequent decision in the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, . Once again Supreme Court stressed the fact that expression sufficient cause should be given a liberal meaning so as to advance substantial justice. The findings so record after due consideration of the earlier precedent are reproduced:

30. From the above observations it is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

The Full Bench decision from the Punjab and Haryana High Court in the case of *Smt. Tara Wanti Vs. State of Haryana*, can also be taken note of. The objection of Section 5 was noted and the said court observed that object of the limitation laws is to compel a litigant to be diligent in seeking remedies in a court of law and put a bar to the stale claims. The interest of the society requires that party should be put to litigation keeping in view its nature. While reverting the question as to what would be sufficient cause, the court observed that it would vary with the facts and circumstances of each case. The precise findings recorded can well be taken note of.

The question of existence of sufficient cause is to be decided on the basis of facts and circumstances of each particular case. The Courts have found it difficult to generally define precisely the meaning of sufficient cause or sufficient reason. Making such an attempt would amount to crystallised into rigid would amount to crystallised into a rigid definition with judicial discretion which the Legislature has for the best of all reasons left undetermined and unfettered. Sufficient cause within the meaning of the section must be a cause which is beyond the control of the party invoking the aid of the section and the test to be applied would be to see as to whether it was a bona fide cause, inasmuch as nothing could be considered to be bona fide which is not done with due care and attention.

The Full Bench of the Gujarat High Court in the case of *Municipal Corporation of Ahmedabad Vs. Voltas Limited and Others*, was concerned with the same question. The majority view in this regard while construing the expression sufficient cause held as under:-

The phrase "sufficient cause" as occurring in Section 8 of the Limitation Act

pertains to the establishment of the appropriate facts before the Court to which the Court can apply its mind and arrive at a conclusion regarding the sufficiency of the cause of otherwise. In essence, Therefore, the phrase "sufficient cause" is nota question of principle, but is a question of fact.

Hence, whether to condone the delay or not depends upon the facts and circumstances of each case as "sufficient cause" for condensation of delay depends only on the facts placed by the applicants before the Court.

7. From the perusal of what has ben reproduced above, the conclusions can conveniently be drawn that the Legislature in its wisdom did not define the expression sufficient cause. This is for the reason that facts of each case necessarily have to vary. The precise factual reasons for delay within the general ambit of the expression sufficient cause must be established and that too to the satisfaction of the court. However, the powers of the court have not to be exercised arbitrarily. They have to be weighed on judicial scales. But the said power must be exercised to advance the substantial justice rather than confine to the narrow compass. If a party is negligent and not interested necessarily it will not be a sufficient cause for condensation of delay. One would hasten to add that as noted above, there cannot be a precise and definite conclusion in this regard because it is the facts of the case which take prominence and the front seat.

8. Reverting back to the facts of the present petitions under consideration, as noted above, the objections/petition had not been filed within time. The delay has ben explained as to how after the receipt of the arbitral award the opinion was obtained from the Senior Govt. counsel, the Ministry of Law and Therefore some time was taken in drafting of the petition. But some delay always in inherent when files move from one place to another. But in the present case the same has been explained in terms that it was moving from one table to another and in this process it could not be filed within the prescribed three months. The delay is not inordinate to prompt this court to hold that the petitioner was totally negligent. Consequently the delay as such is condoned.

9. However, learned counsel for the respondent highlighted the fact that despite such a fact that objections were filed within 30 days of the expiry of the limitation three months still when the same were returned, again for 2-1/2 months the objections were not filed. The plea s already reproduced above on behalf of the petitioner, is that the file after it was returned was mixed up with certain other files and was traced by the counsel only after the department asked about next date of hearing. There is precious little on the record to disbelieve. Otherwise also once he objections had been filed and delay had been condoned as recorded above, it shows that the petitioner indeed was interested in pursuing the matter. The said delay also is condoned on payment of Rs.2,000/- as costs.

10. List it for arguments on 3rd September, 2001.