

Delhi Development Authority Vs. M/S Durga Construction Co.

Delhi Development Authority Vs. M/S Durga Construction Co.

SooperKanoon Citation : sooperkanoon.com/1096433

Court : Delhi

Decided On : Nov-07-2013

Judge : Vibhu Bakhru

Appellant : Delhi Development Authority

Respondent : M/S Durga Construction Co.

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

07. 11.2013 FAO (OS) 485-86/2011 DELHI DEVELOPMENT AUTHORITY
....Appellant versus M/s DURGA CONSTRUCTION CO.Respondent Advocates
who appeared in this case: For the Appellant : Arun Birbal For the Respondent :
Mr Samrat Nigam, Mr Amit Punj and Mr J.

Mahajan CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE
MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J1 The appellant has preferred the present appeal impugning the order dated 06.04.2011 passed by a learned Single Judge of this court in O.M.P. No.89/2009 (hereinafter referred as the impugned order). By the impugned order, the learned Single Judge has dismissed the application bearing I.A. No.1711/2010 filed by the appellant under section 151 of CPC for condonation of delay of 166 days in re-filing the Objections under section 34 of the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as the Act).

2. The controversy involved in the present case is whether the delay of 166 days in re-filing the Objection under section 34 of the Act can be condoned beyond the statutory period of limitation of three months and thirty days as prescribed under section 34(3) of the Act.

3. The facts relevant for examining the controversy in the present appeal are briefly stated as under.

4. Certain disputes arose between the appellant and the respondent and the same were referred to arbitration. An arbitral award dated 02.04.2009 was made pursuant to the said reference. Being aggrieved with the award, the appellant filed an application under section 34 of the Act (being O.M.P. No.89/2009) whereby the appellant challenged a part of the arbitral award. Admittedly, the said Objections were filed on 24.07.2009 with a delay of 17 days. The Registry of this Court raised certain objections and the said application under section 34 of the Act was returned under objections on the same day. It has been stated by the appellant (in the application for condonation for delay in re-filing) that the award was on A4 size paper running into 147 pages and the same was required to be retyped and filed on legal size paper. The application under section 34 of the Act was re-filed on 24.08.2009 with a typed copy of the award on legal size paper. The Registry of this Court again raised certain objections and the said application was once again returned on the same day i.e. on 24.08.2009.

5. It is stated that the application was re-filed on 23.12.2009 after receiving the complete arbitral record. It has been stated by the appellant (in application for condonation for delay in re-filing) that a part of the record was not provided and in the absence of complete documents, counsel for the appellant could not re-file the Objection till 23.12.2009. It was also stated that the concerned Executive Engineer retired on 30.11.2009 which also delayed the re-filing. The Registry of this Court again raised certain objections and, as per the appellant, the application under section 34 of the Act was finally re-filed on 06.01.2010, after removing all the objections. Therefore, according to the appellant, there was a delay of 166 days in re-filing the Objection. The appellant had filed an application bearing I.A.

No.1711/2010 in OMP No.89/2009 for condonation of delay of 166 days in re-filing the said application under section 34 of the Act.

6. However, as per the respondent, the delay in re-filing exceeds 166 days as, according to the respondent, the Registry of this Court had again pointed out certain defects on 06.01.2010 which were finally cured and the application under section 34 of the Act was re-filed for the last time on 05.02.2010 and not on 06.01.2010 as asserted by the appellant. It is contended by the respondent that the same is evident from the fact that the affidavits annexed with the application under section 34 of the Act, the stay application and the application for condonation of delay indicates that the same were attested on 01.02.2010. Therefore, as per the respondent, there was a delay of 195 days in re-filing the said application.

7. The learned Single Judge allowed the application (I.A. No.1710/2010 in O.M.P. No.89/2009) filed by the appellant for condonation of delay of 17 days in filing the application under section 34 of the Act. However, the application (I.A. No.1711/2010 in O.M.P. No.89/2009) for condonation of delay of 166 days in re-filing the application was dismissed. Consequently, the application preferred under section 34 of the Act being O.M.P. No.89/2009 also stood rejected. The relevant portion of the impugned order is quoted as under:

The submission of the learned counsel for the petitioner is that the respondent-contractor has been awarded interest under the award and delay in re-filing would be duly compensated, if the objections are eventually dismissed on merits. Petitioner placed reliance on the decision of the Supreme Court in Improvement Trust Vs. Ujagar Singh, (2010) 6 SCC786 to submit that unless it is a case of mala fides which are writ large from the conduct of the party, generally as a normal rule, delay should be condoned. An attempt should be made to allow the matter to be contested on merits rather than to throw it out on such technicalities. Having heard learned counsel for the petitioner as well as learned counsel for the respondent, I am not inclined to allow the present application which seeks condonation of delay of 166 days in re-filing the petition. The original period of limitation within which objections can be preferred to the award is three months. The power of the court

to condone delay is only limited to 30 days and not thereafter. The Supreme Court has held in Union of India Vs. Popular Construction Co., AIR 2001 SC4010 that the power of the court to condone delay does not extend beyond the period of 30 days. The delay in re-filing of the petition has to be viewed in the light of the aforesaid period of limitation which is not stretchable beyond the period of three months and thirty days. xxxx xxxx xxxx xxxx xxxx The judgment of the Supreme Court in Improvement Trust (supra), in my view, has no application to present case as it cannot be said that the delay in re-filing is not huge, particularly when the statutory period of limitation cannot be stretched beyond 30 days beyond the limitation period of three months, and the delay in re-filing alone is 166 days. The said decision was rendered by the Supreme Court while considering a case falling under Section 5 of the Limitation Act. Even though Limitation Act is applicable to a petition under the Arbitration and Conciliation Act, the limitation provided under Section 34(3) is elastic only to a limited extent, and not beyond that. For the aforesaid reasons, I find no merit in this application and the same is dismissed.

8. Aggrieved by the impugned order, the appellant has preferred the present appeal. This Court had, by an order dated 03.10.2011, permitted the appellant to deposit the decretal amount in court within a period of three weeks from the date of the said order. The appellant has deposited the entire decretal amount along with interest and the same is placed in a Fixed Deposit. In view of the deposit made by the appellant, this court had by an order dated 19.12.2011 stayed the execution of the arbitral award.

9. It is contented on behalf of the appellant that the learned Single Judge has erred in holding that the delay in re-filing of the petition has to be viewed in light of the period of limitation as specified under section 34(3) of the Act and the same is not stretchable beyond the period of three months and thirty days. It is contended that the court is not powerless to condone the delay in re-filing of an application under section 34 of the Act. A court may decline to condone the delay in re-filing where it is found that the approach of the applicant is negligent or malafide and intended to delay the proceedings. However, in cases where the applicant is able to show sufficient cause for the delay, the courts would exercise their jurisdiction to condone the delay. The counsel for the appellant has placed reliance on a

judgment passed by a Division Bench of this court in the case of S.R. Kulkarni v. Birla VXL Limited:

1998. (5) AD (Delhi) 634. It is also contended that if the defects are of such character as would render a plaint as non est in the eyes of law, then the date of presentation would be the date of re-filing after removal of the defects. However, if the defects are formal or ancillary in nature not affecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the period of limitation. It is contended that the same principle would be equally applicable for an application under section 34 of the Act. Since in the present case, the defects are only formal and ancillary in nature, the application should be taken as filed within the specified period and the delay in re-filing ought to be condoned. The learned counsel for the appellant placed reliance on a decision of this court in DSA Engineers (Bombay) v. Housing & Urban Development Corporation Ltd.:

2003. (1) AD (Delhi) 411.

10. It is contented on behalf of the respondent that the Courts have no jurisdiction to condone the delay in re-filing if the delay in re-filing is beyond the period of three months and thirty days as specified under section 34(3) of the Act. It is argued on behalf of the respondent that what is not permitted in the first instance, i.e. to file objections beyond three months per section 34(3) of the Act, cannot be permitted to be done at the second stage. Consequently, if the re-filing is done after the prescribed statutory period, the court will have no jurisdiction to condone the delay even in cases where the initial filing was within time. The courts lack the jurisdiction to condone delay beyond the period of 30 days as specified under section 34(3) of the Act. The counsel for the respondent has placed reliance on the judgments passed by Division Benches of this Court in India Tourism Dev. Corporation Ltd. v. R.S. Avtar Singh & Co.: FAO(OS) No.58/2011, Decided on 10.02.2011, Delhi Transco Ltd. & Anr. v. Hythro Engineers Pvt. Ltd.:

2012. (6) R.A.J.

299 (Del.) and The Executive Engineer v. Shree Ram Construction Co.:

2011. (2) R.A.J.

152 (Del.) in support of his contention that the court does not have the jurisdiction to condone any delay beyond the period of 120 days (i.e. three months and 30 days) from the date on which the award was received or from the date on which request under section 33 of the Act was disposed of. It is also contended that a failure to file the certified copy of the award must be read as a failure to file a signed copy of the award and the same would be a fatal defect and would render the filing of the application under section 34(3) of the Act inconsequential.

11. The counsel for the respondent has also placed before us the orders passed by the Supreme Court dismissing the Special Leave Petitions preferred against the judgment dated 12.11.2010 passed by the Division Bench of this Court in *The Executive Engineer v. Shree Ram Construction Co.* (supra). It is further pointed out that the said decision was also followed by another Division Bench of this Court in *India Tourism Dev. Corporation Ltd.* (supra) and the Special Leave Petitions preferred against the decision in *India Tourism Dev. Corporation Ltd.* (supra) have also been dismissed by the Supreme Court. A copy of the said decision of the Supreme Court in SLP Nos.9175-9176/2011 decided on 22.07.2013 has also been placed before us.

12. It is also contended by the counsel for respondent that as per Rule 5 in Chapter 1-A (a) of Volume 5 of the Delhi High Court Rules, the objections should have been re-filed 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 the Filing Counter. Rule 5(3) of the said Rules also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of the Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution. The moment it becomes a fresh filing, then under the settled law, the delay beyond the expiry of prescribed period 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, the same was not done and the application was filed after the expiry of 166 days.

13. We have heard the learned counsel for the parties at length. The questions that arise for consideration in the present appeal are, whether a court has the jurisdiction to condone delay in re-filing of an application under section 34 of the Act, where the aggregate period of delay exceeds the period of limitation as specified under section 34(3) of the Act. And if so, whether the delay in re-filing ought to be condoned in the present case.

14. Section 34(3) of the Act is relevant and is reproduced below:

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

15. A plain reading of section 34(3) of the Act indicates that the period of limitation prescribed is with respect to making an application for setting aside an award and not in respect of further steps once such an application is made. Thus, there is no time specified in the Act, in respect of re-filing of an application under section 34 of the Act, which has been returned to remove to certain defects. Thus, in our view, while section 34(3) of the Act does indicate the intention of the legislature to ensure that there is no undue delay in filing of an application under section 34 of the Act, the same does not provide any time limit for re-presenting the application. Any restriction with regard to the jurisdiction of the court in condoning the delay in re-filing cannot be read into the provision of section 34(3) of the Act.

16. In our view, filing of an application and re-filing the same after removing defects, stand on completely different footings in so far as the provision of limitation is concerned. It is now well-settled that limitation does not extinguish an obligation but merely bars a party to take recourse to courts for availing the remedies as available to the party. Thus, in the event a party fails to take expeditious steps to initiate an action within the time as specified, then the courts are proscribed from entertaining such action at the instance of such a party. The

rationale of prescribing time limits within which recourse to legal remedies can be taken has been explained by the Supreme Court in the case of *Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn.*: (1971) 2 SCC 860 as under:

7. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.

17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in *Ashok Kumar Parmar v. D.C. Sankhla*:

1995. RLR85 whereby a Single Judge of this Court held as under:

Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the

date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.

A Division Bench of this Court upheld the aforesaid view in *D.C. Sankhla v. Ashok Kumar Parmar*:

1995. (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:

5. In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act.

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.

19. The Supreme Court in the case of *Union of India v. Popular Construction Company*: (2001) 8 SCC 470 has held that the time limit prescribed under section 34 of the Act to challenge an award is not extendable by the Court under section 5

of the Limitation Act, 1963 in view of the express language of section 34(3) of the Act. However, this decision would not be applicable in cases where the application under section 34 of the Act has been filed within the extended time prescribed, and there is a delay in re-presentation of the application after curing the defects that may have been pointed out. This is so because section 5 of the Limitation Act, 1963 would not be applicable in such cases. Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation in certain cases where the Court is satisfied that the appellant/applicant had sufficient cause for not preferring an appeal or making an application within the specified period. In cases, where the application/appeal is filed in time, section 5 would have no application. The Supreme Court in the case of *Indian Statistical Institute v. Associated Builders*: (1978) 1 SCC 483 considered the applicability of section 5 of the Limitation Act, 1963 where the objection to an award under the provisions of the Arbitration Act, 1940 was filed in time but there was substantial delay in re-filing the same. The High Court in that case held that there was a delay in filing the objections for setting aside the award and consequently, rejected the application for condonation of delay. An appeal against the decision of the High Court was allowed and the Supreme Court rejected the contention that there was any delay in filing objections for setting aside the award. The relevant extract from the decision of the Supreme Court is reproduced below:

9. In the circumstances, it cannot be said that objections were not filed within time or that because they were not properly stamped the objections could not be taken as having been filed at all. Therefore, in our view, there had not been any delay in preferring the objections. The delay, if any, was in complying with the directions of the Registrar to rectify the defects and re-filing the objections. The delay, as we have pointed out earlier, is not due to any want of care on the part of the appellant but due to circumstances beyond its control.

10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of

the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the lower court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be represented.

20. It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.

21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in *M/s. Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman*:

2011. (2) R.A.J.

347 (Del) has held as under:

9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in refiling are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refilling the petition.

22. The decision of a Division Bench of this Court in *The Executive Engineers v. Shree Ram Construction & Co.* (supra) which is relied upon by the respondent also does not support the contention that this Court would not have the jurisdiction to condone the delay in re-filing beyond the period of three months and 30 days as specified under section 34(3) of the Act. The Court in that decision had pointed out that, in the context of Arbitration and Conciliation Act, liberality in condoning the delay in refiling would be contrary to the intention of the Parliament. However, this does not imply that the Court would have no jurisdiction to condone the delay in re-filing beyond the period as specified in section 34(3) of the Act. This is also apparent from Para 41 of the said judgment which reads as under:

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.

(underlining added) 23. The abovementioned decision of The Executive Engineers v. Shree Ram Construction (supra) has also been considered by this Court in Delhi Transco Ltd. v. Hythro Engineers Pvt. Ltd. (supra), wherein it has been explained as under:-

9. The decision in Competent Placement Services (supra), in our view, does not say anything to the contrary from what has been observed by the Division Bench in Shree Ram Construction Co. (supra). All that has been observed by the same Division Bench on the same day, is that the rigors of condonation of delay in re-filing are not as strict as condonation of delay in filing under Section 34(3). At the same time, the Division Bench also observed but that does not mean that a party can be permitted an indefinite and unexplainable period for re-filing the petition.

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.

(underlining added) 24. The respondent has also relied upon the order of the Supreme Court dated 22.07.2013 dismissing Special Leave Petition No.9175-9176/2011 in *India Tourism Development Corp. Ltd. v. R.S. Avtar Singh & Co.* The above Special Leave Petitions arose from the judgment order dated 10.02.2011 in FAO No.58/2011 and CM No.2252/2011 which in turn had relied upon the judgment in *The Executive Engineers v. Shree Ram Construction & Co.* (supra). As the Special Leave Petitions against the decision in *The Executive Engineers v. Shree Ram Construction & Co.* (supra) had been dismissed, an application was moved for dismissal of the said Special Leave Petitions. The Supreme Court allowed the application and dismissed the Special Leave Petitions. The said order also cannot be read to hold that a court does not have the jurisdiction to condone delay in re-filing of an application under section 34 of the Act, beyond the period of three months and thirty days, where the initial filing was within the time as

specified under section 34(3) of the Act.

25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred.

26. In our view, although this Court has the jurisdiction to condone the delay in re-filing the subject application, nonetheless, exercise of this jurisdiction in favour of the appellant is not warranted in the facts of this case. Accordingly, the present appeal stands disposed of with no order as to costs. The decretal amount which has been placed in a fixed deposit, is directed to be released to the respondent.

VIBHU BAKHRU, J BADAR DURREZ AHMED, J NOVEMBER07 2013 RK

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com