

Delhi Development Authority Vs. Associated Builders

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Court : Delhi

Decided On : Nov-11-2005

Reported in : 125(2005)DLT411

Judge : Vijender Jain and; Rekha Sharma, JJ.

Acts : Arbitration Act - Sections 30 and 33; Limitation Act

Appeal No. : CM No. 2394/2004 in FAO (OS) 29/2004

Appellant : Delhi Development Authority

Respondent : Associated Builders

Advocate for Def. : B.K. Diwan, Adv.

Advocate for Pet/Ap. : Anusuya Salwan, Adv

Disposition : Application dismissed

Judgement :

Vijender Jain, J.

1. This is an application for condensation of delay in filing the appeal of 538 days. Learned counsel appearing for the appellant has contended that the case was decided on 19.7.2002. Thereafter, certified copy was prepared on 16.12.2003 and the same was delivered to the appellant on 16.12.2003. The reasons which have

been stated for delay in filing the appeal are that the counsel vide his letter dated 15.12.2003 received in the office of the appellant on 18.12.2003 stated as under:-

The above case was marked to me on March 22, 2002 and the file was delivered at my office on or about May 1, 2002. On the cover of the file the suit number was marked in such a manner that one could normally read it as 951-A/2000'

2. Thereafter the file was sent to the Legal Department of the appellant for its opinion in filing the appeal. The Legal Department decided to file the appeal and sent the file to the concerned department on 30.12.2003. It is contended that the stakes in the appeal are high in as much as the amount involved is to the tune of Rs. 75/- lakhs and, therefore, the application for condensation of delay be allowed.

3. On the other hand, learned counsel for the respondent has contended that the application filed for condensation of delay is an abuse of the process of the Court as certain facts have not been disclosed in the application. As per the counsel the story made out for seeking condensation is totally belied by the judicial record. Our attention has been drawn to the order passed by the executing court on 18.8.2003 when the counsel appearing of the Judgment Debtor sought time to verify the fact whether the objections against the award had already been dismissed vide order dated 19.7.2002. Accordingly, the case was adjourned to 31.10.2003. When the case was taken up on 31.10.2003 the following order was passed:-

'31.10.2003

Present:

Shri B.K. Dewan advocate for the DH.

Mrs. A.Salwan, advocate for the J.D.EA No. 614 of 2003

Execution No. 100/2001.

The counsel for the Decree Holder submits that the objections under Section 30 and 33 of the Arbitration Act have been dismissed vide order dated 19.7.2002. Counsel for the judgment debtor prays for a short adjournment for getting the

calculation checked up and also seeking instructions in regard to the payment of the decretal amount.'

4. Thereafter, the matter was listed on different dates and also on 11.2.2004 by which date the appeal against the order of the learned Single Judge had already been filed by the Judgment Debtor but this fact was not brought to the notice of the executing court even though counsel for the judgment debtor was present before the said court. Rather the counsel took time to seek instructions in the matter in regard to the calculation of the amount payable under the decree. In this context the subsequent orders dated 23.3.2004 and 28.5.2004 are relevant and are therefore being reproduced: -

'23.3.2004

Present:

Shri B.K. Dewan, advocate for the D.H.

Ms. Monika Sharma for Ms. A.Salwan, Adv. for J.D.Execution No. 100/2001

Learned counsel for the J.D. placed on record the calculation made by the Judgment Debtor to Decree holder. According to this calculation a sum of Rs. 72,20,552/- is payable to the Decree Holder. Let this amount be immediately released in favor of the Decree Holder for determining the question of remaining amount as per the claim of the Decree Holder.'

'28.5.2004

Present:

Shri B.K. Dewan, advocate for the D.H.

Ms. Monika Sharma for Ms. A.Salwan, Adv. for J.D.EA 211 of 2004 in Execution No. 100/2001

Counsel for the J.D. Prays for two weeks time as steps are being taken to deposit of Rs. 72,20,522/- in terms of the order dated 23.3.2004. Let this amount be

deposited within two weeks failing which the attachment will be ordered in respect of this amount upon the Judgment Debtor's Bank Account in State Bank of India, Vikas Sadan, INA, New Delhi. EA stands disposed of.'

5. The appeal was filed on 9.2.2004 and on 13.7.2004 Division Bench of this Court, when nobody was present on behalf of the respondent directed the appellant to deposit the awarded amount and stayed the award.

6. In order to deal with the cases of condensation of delay pertaining to Government or Public Authorities the Court takes into account the impersonal interest involved in the case and as such the possibility of delay taking place in dealing with the files of the department. The reverse possibility also cannot be ruled out that at the behest of somebody who is interested in the matter in the department and its hierarchy are deliberately not processing the matter with promptitude. thereforee, in these kinds of cases the veil has to be lifted and the delay has to be normally condoned but whether the present case falls in such a category is the question before us. The stand of the appellant in the application for condensation of delay is that the file could not be processed because of the lawyer not getting the correct number of the suit, whereas the orders reproduced hereinabove clearly indicate that the appellant was in the know of the order passed by the learned Single Judge. We have asked the learned counsel appearing for the appellant that even if the half truth with which this application has been filed is ignored, what is the justification when according to the averments made in the application, the appeal was drafted by the counsel on 14.1.2004, as per paragraph 8 of the application yet the same was filed on 9.2.2004. No Explanationn has come forward. As a matter of fact Ms. Salwan very fairly contended that she has no Explanationn to offer. We feel that if the kind of Explanationn which has been furnished in the present application for condensation of delay is allowed, it would be making the provision of Limitation Act otiose.

7. We would also like to comment on the conduct of the appellant that for the first time it was brought to the notice of the executing court when Division Bench in the absence of the opposite party had stayed the award on 19.7.2004. Application has no merit. Dismissed.

8. Dismissed.

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