

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT : ARBITRATION AND CONCILIATION ACT, 1996

O.M.P. 96/2008

DATE OF DECISION : 10.12.2014

UNION OF INDIA Petitioner
Through: Mr. Ruchir Mishra and Mr. Aditya Madan, Advocate

versus

M/S R.R. FOUNDATION ENGINEERS (P) LTD Respondent
Through: Ms. Anusuya Salwan and Ms. Renuka Arora, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

IA No.1810/2008 (condonation of delay)

1. This is an application seeking condonation of delay in re-filing the petition. According to the petitioner, the delay is of 53 days in re-filing. Notice in this application was issued on the very first date i.e., 12.02.2008 alongwith notice in the main petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 1996 Act).
2. This application seems to have gone of the radar of the court and the application evidently has not been disposed of though orders have been issued by my predecessor on 29.04.2009 directing that the matter be put in the category of finals.
3. Ms. Salwan, who appears for the respondent opposes the application. It is her contention that the petition has been filed beyond the time prescribed under Section 34 (3) of the 1996 Act. Ms. Salwan says that therefore, this court has no power to condone the delay.

3.1 In support of her submissions, Ms. Salwan relies upon the provisions of the Delhi Rent Control Act, 1958 (in short DRC Act) concerning leave to defend contained in Section 25B (4). It is Ms. Salwan's contention that there are series of judgments of this court as well as that of Supreme Court that delay in filing a duly attested affidavit within the time prescribed under Section 25B (4) of the DRC Act has been treated as delay which is not condolable on the ground that such an affidavit is no affidavit in the eyes of law.

3.2 It is Ms. Salwan's contention that the affidavit in the accompanying petition filed under Section 34 of the 1996 Act bears an attestation date of 01.02.2008. Therefore, according to Ms. Salwan, on the date the petition was filed, it was either without an affidavit or an affidavit which did not bear an attestation and if 01.02.2008 is taken as the date of attestation, which is the date which appears on the face of the affidavit, the petition is as filed well beyond the time prescribed under Section 34 (3) of the 1996 Act.

4. Mr. Madan, on the other hand says that the petition was filed within a period of three months i.e., on 13.11.2007, and therefore, the delay, if any, is in re-filing. It is Mr. Madan's contention that delay occurred on account of the fact that the petitioner had to get a large number of annexures, which were dim, typed, and since, the record was bulky, a major part of time, for which condonation is sought, was taken up in completing this exercise.

5. I have heard the learned counsel for the parties. The record shows that the petition qua the impugned award 20.08.2007, was filed in the first instance, on 13.11.2007. There were several other objections raised, though there is no objection raised with regard to the affidavit not having been filed with the petition. The objections, it appears were finally removed on 08.02.2008. What can be presumed, therefore, is that, the Registry did not note the fact that the petition, was perhaps, not filed with an affidavit or that the affidavit accompanying the petition was not attested.

5.1 Willy-nilly, the petitioner has obtained an attestation of the affidavit, which is dated 01.02.2008. There is no doubt that the attestation is beyond the period prescribed under Section 34 (3) of the Act. What is, however, apparent on the perusal of the record, is that, the petition though, bears the signatures of the client as well as that of the lawyer.

5.2 Therefore, to my mind, at best, if the petition was not accompanied by a duly attested affidavit, it was only an irregularity, which could have been cured. As of today, the petition is accompanied, concededly, by an affidavit

which is duly attested.

5.3 The reliance on the provisions of sub-Section (4) of Section 25B of the DRC Act, according to me is misconceived. The said provision prescribes that where the tenant is served with summons in the form prescribed under third schedule of the DRC Act, he cannot contest the prayer for eviction from the premises in issue unless he files an affidavit stating the grounds on which he seeks to resist an application for eviction, and consequently, obtain leave to defend from the Rent Controller. The provision makes it clear that the affidavit so filed should contain grounds of opposition. Therefore, necessarily, the affidavit has to be sworn by the person, who takes those grounds. There is no provision for filing an application; the affidavit under the DRC Act, by a legislative directive, if I may say, takes the sole of an application.

5.4 The said provision, in my view, cannot be imported by reference or otherwise in the provisions of the 1996 Act. There is no provision in the 1996 Act for filing an affidavit alongwith a petition filed under Section 34 (3) of the 1996 Act. The provision of filing an affidavit is contained in the Code of Civil Procedure, 1908 and the Rules framed by this court which are adopted for the purposes of filing a petition under Section 34 of the 1996 Act. Therefore, in my opinion, a legislative mandate of another Act cannot be read into the provisions of the 1996 Act, to defeat a valuable right conferred on the petitioner to prefer objections to the award. According to me, the defect, if any, is curable; being only an irregularity, given the fact that the petition was signed by an authorised representative of the petitioner and also by its lawyer. As indicated right at the beginning, notice in the petition was issued four (4) years ago. Therefore, to dismiss the petition on this ground, at this stage, would be a complete travesty of justice.

5.5 Furthermore, reasons given in the captioned application for delay are believable as the record if, not bulky, is sufficiently voluminous. Typing of annexures, had to be undertaken by the petitioner, and therefore, delay, which largely, was occasioned for that reason, would have to be condoned.

6. In view of the above, the delay is condoned, and the application is allowed.

IA No.4709/2008 (for directions)

7. Ms. Salwan, the learned counsel for the respondent says that she does not wish to press the captioned application, at this stage.

8. The captioned application is accordingly dismissed as withdrawn.

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9. List in the category of 'finals' as already directed vide order dated 29.04.2009, according to its age and seniority.

Sd/-
RAJIV SHAKDHER, J

DECEMBER 10, 2014