

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.2359/2008 and IA No.13667/2008 (U/s.5 of the Limitation Act)**

% **Date of decision: 31<sup>st</sup> August, 2009**

**M/s. MODEL FURNISHERS** ....Petitioner

Through: Ms. Kailash Golani,, Advocate

**Versus**

**DELHI DEVELOPMENT AUTHORITY & ANR.** ... Respondents

Through: Mr. Rajesh Mahajan, Advocate for DDA.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**RAJIV SAHAI ENDLAW, J.**

1 The suit has been filed under Section 14 and 17 of the Arbitration Act, 1940 for directing the respondent No.2 arbitrator to file the arbitral award dated 26<sup>th</sup> April, 1990 in this court and for making the same rule of the court. The suit was filed in this court first on 23<sup>rd</sup> October, 2008 i.e. after more than 18 years from the date of the arbitral award. The long delay is sought to be condoned.

2 The suit has been preferred by one Mrs. Soni Dave claiming to be the daughter and only legal heir of late Mrs. Raj Kumari Berar who is stated to have been the Proprietor of the petitioner.

3 The plaintiff had immediately after the award and within the prescribed period of limitation made an application under Section 14 and 17 of the Arbitration Act, 1940 in the court of the Additional District Judge Delhi. The said suit came to be decided vide order dated 3<sup>rd</sup> August, 1991. Though the respondent / DDA had preferred objections to the award and the court held the said objections to be time barred, the court also found that the court of the Additional District Judge was not the court having pecuniary jurisdiction for making the award a rule of the court inasmuch as the claims before the arbitrator were for an amount in excess of the minimum pecuniary jurisdiction of that court, even though the award was for an amount within the pecuniary jurisdiction of that court. The said order attained finality. The petitioner remained quiet for over 17 years after the said order and has thereafter filed this suit. On 15<sup>th</sup> April, 2009 the statement of the counsel for the petitioner was recorded that the petitioner will not claim interest on the awarded amount for the period of the delay.

4 Now the application for condonation of delay is for consideration. The counsel for the petitioner has placed reliance on ***N.Balakrishnan Vs. M.Krishnamurthy*** (1998) 7 SCC 123 wherein it has been held that the length of the delay is not relevant and the acceptability of the explanation is the only criteria. Reliance is also placed on ***Bharat Coking Coal Ltd. Vs. M/s. L.K. Ahuja & Co.*** AIR 2001 Supreme Court 1179 and ***Ram Nath Sao @ Ram Nath Sahu & Others Vs. Gobardhan Sao & Others*** (2002) 3 SCC 195.

5 As far as sufficiency of explanation is concerned, in the application for condonation of delay it is stated that the petitioner

being an old lady could not move the court, she was bed ridden and she wrote a letter dated 16<sup>th</sup> August, 2007 to the DDA and on a reply dated 18<sup>th</sup> March, 2008 was received from the DDA and from which she came to know that the court has not made the award rule of court.

6 The said explanation of the petitioner does not appear to be bona fide. The petitioner in the letter dated 16<sup>th</sup> August, 2007 to the DDA did not mention that the arbitral award had been made rule of the court. The petitioner did not at all refer to the proceedings before the Addl. District Judge. The DDA also in its reply dated 18<sup>th</sup> March, 2008 did not state that the award had not been made rule of the court; DDA asked the petitioner for details of case. In fact in the application also it is not expressly stated that the petitioner had no knowledge of the order aforesaid of the court of the Additional District Judge returning the suit filed under Section 14 and 17 of the Act; only an impression to that effect is sought to be conveyed. From the certified copy of the order of the Additional District Judge filed before this court the date when the same was applied for or when the certified copy was ready is not very clear. Though at most of the places the certified copy appears to have been applied for and made available in the year 2003, at couple of places 2003 appears to have been changed to 2008. The counsel for the petitioner of course contends that the certified copy was applied for only in April, 2008. Even if that were to be correct, the same was ready in April, 2008 itself but the present petition was filed as aforesaid only in October, 2008. There is no explanation for the said delay even.

7 The certificate of illness filed along with the petition is of the year 2007 only. There is nothing to show as to what happened

between 1991 and the year 2007. Though the counsel for the petitioner has repeatedly urged that the petitioner was aged about 80 years but 17 years ago she would have been much younger. The record shows that the petition before the Additional District Judge was being pursued by the daughter of the petitioner and not by the petitioner herself. Thus daughter was fully aware of the proceedings. It is not as if she become aware of the award only after the demise of the petitioner.

8 The petitioner was carrying on business of furniture. Nothing has been disclosed as to what happened to the said business. It is not the case that on account of the age or illness of the petitioner, the business was stopped in 1991 or not carried on thereafter. In fact the correspondence with DDA shows that the son-in-law of the petitioner was also the attorney of the petitioner for the said business.

9. The counsel for the petitioner has also emphasized on the petition having been filed before the Addl. District Judge on time. However, the institution before a court not raising jurisdiction, is no institution. The same can at best entitle the petitioner to seek exemption of the time the proceedings were pursued before that court. The petitioner however thereafter slept over her rights for over 17 years; she has shied from stating that she was not aware of the order returning the petition.

10. The reason given for condonation of delay therefore does not inspire any confidence. The application is very vague. The counsel for the respondent/DDA has rightly contended that if such explanation/causes are to be accepted, the same will bring the

limitation law to a naught. No ground having been found to condone the delay, the suit as well as the application are dismissed. However in the circumstances, no order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

August 31<sup>st</sup>, 2009  
J