

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.10340 OF 2016
(Arising out of SLP(C)No.2986/2016)

NORTHERN RAILWAY

APPELLANT (S)

VERSUS

M/S. PIONEER PUBLICITY CORP. PVT. LTD.

RESPONDENT (S)

O R D E R

Leave granted.

The appellant is aggrieved by the decision of the Delhi High Court dated 1.9.2015 in FAO (OS)NO.436 OF 2015 refusing to condone a period of 65 days in re-filing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act'). The award was delivered on 29.10.2012. Admittedly, the objections under Section 34 were filed within the time stipulated under Section 34 of the Act. However, since there was objections, time was granted on 23.1.2013 by the Deputy Registrar of the High Court to remove the objections within a period of 7 days. This was not done.

Eventually, the appellant re-filed the matter on 21.3.2013. the explanation given by the appellant is that the amount of court fees to the extent of Rs.8,94,000/- was to be arranged and that took some time. The appellant is the Northern Railway and while it is difficult to condone such inefficiency which seems to be a persistent reality with the organisation, such as the Northern Railway, that took time in arranging even the small things.

Mr. Amarjeet Singh Chandiook, learned senior counsel appearing for the respondent submitted that Section 34(3) of the Act bars re-filing beyond the period stipulated therein. The said sub-Section reads as follows:

"34.(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."

We find that said section has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.

We are not inclined to accept this contention particularly since the petitioner has offered an explanation for the delay for the period after the extensions.

Having regard to the overall circumstances of the case, we consider it appropriate in the interest of justice to set aside the impugned order.

Accordingly, the appeal is allowed and the impugned order of the High Court is set aside. We further direct that the objections of the appellant under Section 34 be taken on the file of the court and the matter be disposed of in accordance with law. The parties are directed to appear before the appropriate court on 28th November, 2016 after obtaining certified copy of this order.

.....J.
[S.A. BOBDE]

NEW DELHI
OCTOBER 24, 2016

.....J.
[ASHOK BHUSHAN]

ITEM NO.44

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2986/2016

(Arising out of impugned final judgment and order dated 01/09/2015
in FAO No. 436/2015 passed by the High Court Of Delhi At New Delhi)

NORTHERN RAILWAY

Petitioner(s)

VERSUS

M/S. PIONEER PUBLICITY CORP. PVT. LTD.

Respondent(s)

(with interim relief and office report)

Date : 24/10/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Kiran Suri, Sr. Adv.
Ms. Ritu Bhardwaj, Adv.
Mr. Shreekant N. Terdal, Adv.For Respondent(s) Mr. Amarjit Singh Chandiok, Adv.
Ms. Manmeet Arora, Adv.
Mr. Chand Chopra, Adv.
Ms. Sweta Kakkad, Adv.
Mr. Sarvesh Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the signed order.

[O.P. SHARMA]
AR-CUM-PS[INDU POKHRIYAL]
COURT MASTER

(Signed order is placed on the file)