

Delhi High Court

National Highways Authority Of ... vs M/S Jsc Centrodorstroy on 17 September, 2009

Author: Shiv Narayan Dhingra

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 04, 2009

Date of Order: September 17, 2009

+ IA No.2807/2009 in OMP No.99/09

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17.09.2009

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Petitioner

Through: Mr. Sumit Gahlawat with  
Ms. Padma Priya, Adv.

versus

M/S JSC CENTRODORSTROY

..... Respondent

Through: Mr. Sandeep Sharma, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

ORDER

1. This application has been filed for condonation of delay of 77 days in re-filing the present application under Section 34. It is not disputed that the petition under Section 34 initially was filed within the period of limitation. However, the Registry raised some objections and the objections were not removed within time and there was a delay of 77 days in re-filing the petition after removal of objections. The plea taken in the application is that the clerk of counsel for the applicant had to leave for his native place urgently due to some personal reasons because of which the file of the present petition became untraceable. The clerk of counsel for the applicant joined office only on 5th February, 2009 and thereafter it IA No.2807/2009 in OMP No.99/09Page 1 of 4 took 3-4 days for him to trace the relevant file of the present case.

Thus, there was delay of 77 days in re-filing the present petition.

2. The application is opposed by respondent on the ground that the affidavit filed along with the petition regarding reasons of delay was not truthful. The petitioner in another case had taken different stand, while counsel is same, clerk is same. There the ground taken is that of confusion, here the ground taken is of clerk having gone to his native place.

3. This Court in Delhi Jal Board vs. Digvijay Singh Sanitations & Anr. OMP No. 396/2007 decided on 26.5.2009 observed as under:

"6. Counsel for the petitioner, on the other hand, relied on 2007 (10) ADL 42 DDA v R.S. Jindal wherein a Division Bench of this Court observed that the statutory authority had to rely on their counsels who conduct cases and when the counsel admitted that there was default and mistake by his office, the statutory authority should not be made to suffer for the mistake of the counsel.

7. A perusal of record would show that the initial filing was done on 26th August 2006 i.e. within the period of three months and refilling was done on 18th July 2007. It is obvious from the affidavit filed by the petitioner's counsel that after the file was taken back from Registry for removing the objections, it got misplaced in another file with same cause title and the counsel could not pay attention due to ailment of his uncle. The other OMP between the same parties though came up for hearing in May, 2007 but in that only an adjournment was sought by respondent. In view of this fact, there seems to be no chance of the counsel for petitioner stumbling upon the objections lying in the file. It only seems that after execution IA No.2807/2009 in OMP No.99/09Page 2 of 4 was filed by respondent, the petitioner's counsel realized that objections filed by the petitioner were to be refilled after removing objections and then made efforts to trace the objections.

8. The petitioner in this case had filed objections against the award within the stipulated period. It is only the counsel who did not rectify the petition after removing objections. The petitioner (Delhi Jal Board) in this case being a statutory body has to depend upon on its advocate. The counsel who had taken back the petition for removing office objections, could not refile the petition due to intervening circumstances. I consider that the petitioner who had filed objections within the prescribed period under the law, cannot be made to suffer for the negligence on the part of its counsel. The delay in refilling is though is of about ten and half months but due to circumstances explained by counsel and in view of the fact that nothing has come on record to show that what has been stated by counsel for the petitioner was not correct, the application deserves to be allowed. It is not a case of the respondent that the uncle of the petitioner's counsel had not suffered from heart attack or he had not left Delhi. In DDA v. R.S. Jindal's case (supra), this Court had considered condonation of delay of 216 days in filing Intra Court Appeal and observed that since DDA had to rely on the counsel, for the mistake of counsel, the petitioner should not be made to suffer.

9. Section 5 of the Limitation Act is not applicable as far as filing of petition under Section 34 is concerned, however, I consider that once the petition is filed within time, if there is delay in refilling, the Court can consider condonation of delay under Section 5 of the Limitation Act and if it is found that the reasons are justified, such delay can be condoned."

4. It is apparent that in this case counsel for the petitioner acted negligently and there was no negligence on the part of the petitioner in filing objections, I therefore consider that the petitioner IA No.2807/2009 in OMP No.99/09Page 3 of 4 cannot be penalized for this. But the excuses of the clerk going to his home town or clerk not taking steps cannot be considered as a valid excuse. It is not the clerks who practice in this Court and if the clerk goes to his home town, the counsel have

entire team of juniors and other clerks to take care of their clerical business and removal of objections with the Registry is job of counsel and not of the clerk.

The application is allowed with the costs of Rs.20,000/- to be paid by the counsel from his own account to the Prime Minister Relief Fund.

OMP No.99/09 List on 8th December, 2009.

September 17, 2009 SHIV NARAYAN DHINGRA J.

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