

# **No condonation of delay for setting aside an award**

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The Delhi High Court has recently re-affirmed the strict applicability of the limitation prescribed in Section 34(3) of the **Arbitration and Conciliation Act (“Act”)** in the case of Northern Railway v. M/s. Pioneer Publicity Corporation Pvt. Ltd. & Anr 2015 SCC OnLine Del 11646.

The procedure and grounds to set aside a domestic arbitral award are provided in Section 34 of the Act which provides a time period of 3 months for filing an application for setting aside an award.

*Section 34(3) of the Act* reads: 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.

As provided above, the law envisages the possibility that an application may not be filed within 3 months, in which case the delay can be condoned for an additional period of one month at the most if the applicant was prevented by sufficient cause from making the application within time.

The Courts have time and again applied this provision very strictly. The same was done by the Delhi High Court in the present case.

#### **Facts of the Case:**

The award that the appellant sought to set aside was rendered by a Sole Arbitrator on 29.10.2012 and a copy of the award was given to the appellant the same day. The three month period for filing the application for setting aside the arbitral award expired on 29.01.2013. The Appellant had filed the application within time on 23.01.2013 but the same was returned as defective as the requisite court fees of Rs. 8 lakhs (1% of the awarded amount) had not been filed along with the application. The court fees affixed on the application was only Rs 500.

The application was re-filed on 21.02.2013 but was again returned by the Registry as defective. It may be noted that the additional period of thirty days permissible under proviso to section 34(3) expired on 26.02.2013.

Subsequently, the application was again returned as defective four times before it was listed before the court. The learned Single Judge held that the explanation for delay of nearly two months in re-filing rendered by the appellant was not satisfactory and refused to condone the delay.

## **Decision**

The Appellant then appealed this decision before a Division Bench of the High Court which dismissed the appeal, holding inter alia that, “in arbitration matters, the limitation has to be strictly construed and the parties cannot be permitted to frustrate the very purpose of the Act.”

The Court considered the case of *DDA v. Durga Construction Company 2014 RLJ 490 (Del)* wherein it was held that the Court would be slightly more liberal in allowing the condonation of delay in re-filing, but did not apply the same to the present matter as the Appellant had failed to act diligently.

## **Analysis**

As already mentioned, this case is a welcome decision which seeks to reinforce the strict applicability of Section 34(3) and prevent parties from delaying the resolution of disputes.

Interestingly, the Court refused to condone the delay even though the application had initially been filed within the time period of three months, essentially preventing the Appellant from taking advantage of that fact in light of the manner in which he had acted, that is, filing the same defective application 5 times.