

(2014) 09 DEL CK 0009

Delhi High Court

Case No: O.M.P. 156/2013

M.P. State Co-op. Oilseed
Growers Fedration Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Sept. 1, 2014

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 34, 34(3)
- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 3, 149, 151
- Limitation Act, 1963 - Section 29(2), 5

Citation: (2015) 2 AD 220 : (2015) 215 DLT 349

Hon'ble Judges: Deepa Sharma, J

Bench: Single Bench

Advocate: Arjun Garg and Sanjana Ramachandran, Advocate for the Appellant; Jaswinder Singh, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Deepa Sharma, J.

The objections u/s 34 have been filed by the petitioner against an award dated 25.07.2012. The award was apparently received by the parties on 31.07.2012. Section 34(3) of Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") prescribes the period of limitation for filing the objections under an award and that limitation is 90 days. Proviso to Section 34(3) gives the power to the Court to extend the said period of limitation for another period of 30 days provided sufficient reasons for the delay has been explained. In the present case, the limitation for filing the objections started with effect from 01.08.2012 and expired on 31.10.2012, i.e., 90 days. The present petition was filed on 28.09.2012 and, therefore, it is apparent that the petition was filed within the prescribed period of limitation of 90 days.

2. After the petition was filed, several objections were raised by the Registry and the petitioner could remove those objections only by 14.02.2013 and, thereafter, the petition was presented before this Court.
3. Along with the petition u/s 34 of the Act, the petitioner has also moved an application u/s 151 CPC for condonation of delay in re-filing the case. Two reasons have been shown for such delay in the application; one is that the office of the petitioner being at Bhopal, there was telephonic gap of communication between the counsel of the petitioner at Delhi and the AR of the petitioner at Bhopal. The counsel for the petitioner at Delhi is stated to be Shri Gaurav Garg although in the application the petitioner has not disclosed the name of counsel at Delhi and the name of the AR of the petitioner. But, during the course of arguments, the name of Shri Gaurav Garg, Advocate who is based in Delhi is disclosed and the identity of AR of the petitioner, is disclosed as the Managing Director of the Federation. The second reason for delay is stated to have occurred on account of the amendment in the Court Fees Act, under which the petitioner was required to arrange the Court Fee. On these facts, it has been prayed that delay of 108 days in re-filing be condoned.
4. Reliance is placed by the learned counsel for the petitioner on the case law in [Delhi Development Authority Vs. Amita Nand Aggarwal through its Proprietor Shri S.K. Gupta](#), and [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), .
5. Reply to the application has been filed. In the reply, it is submitted that total delay is 128 days and not 108 days, as stated in the petition. It is submitted that the petition was filed on 27.09.2012 and after the objections were raised, the petitioner was to remove the objections within a week and had to re-file the same by 04.10.2012. The objections could be removed finally only on 14.02.2013 and the re-filing was done thereafter. Therefore, the total delay comes to 128 days. It is further submitted that the delay has not been properly explained. The delay in refiling was without any cogent reason and shows gross negligence on the part of the petitioner.
6. It is submitted that as regards the amendment in the Court Fee is concerned, it has become effective from 01.08.2012, i.e., before the initial filing of the petition on 27.09.2012. Therefore, this plea of the petitioner is not bona fide.
7. The respondent has relied on the case law in [Delhi Development Authority Vs. M/s. Durga Construction Co.](#), and [The Executive Engineer \(Irrigation and Flood Control\) Vs. Shree Ram Construction Co.](#), .
8. In the rejoinder, the petitioner had denied that the delay was 128 days and had again reiterated the delay of 108 days. However, during the course of arguments, it is not disputed that actual delay in re-filing was 128 days. It is submitted that this Court has jurisdiction to condone the delay in re-filing. It is further submitted that

the case of the petitioner was conducted under the control of Shri Saroj Kumar Verma, who is a Bhopal based lawyer and had engaged Shri Gaurav Garg, Advocate to conduct case in Delhi. It is also submitted that he was totally dependent on Shri Gaurav Garg for pursuing his case. Mr. Gaurav Garg under the impression that since the amendment of Court Fees Act (made in 2012) was under challenge, filed the Court fee as per the old Act before amendment. On 26th November, 2012, he informed Shri Saroj Kumar Verma, Advocate that Court Fee equivalent to 1% of the amount awarded was payable (copy of the letter is also annexed as Annexure-I). Mr. Saroj Kumar Verma, Advocate, vide its letter dated 26.11.2012 informed the petitioner at Bhopal for preparing a bank draft of Rs. 4,35,300/- towards court fees. On 19.12.2012, the DD was personally deposited in the Treasury at Delhi. On reaching Bhopal on 20.12.2012, Mr. Verma informed the petitioner that DD was deposited and stamp would be made available only on 02.01.2013 and a letter to this effect is also annexed as Annexure -3. The stamps were received in the Registry on 19.01.2013. The Registry again raised objections such as non-filing of the application for condonation of delay which was subsequently filed on 12.02.2013. Finally, on 14.02.2013, the Registry accepted that all the objections had been removed. It is submitted that due to these reasons, which are wholly attributable to the counsels, the delay in re-filing be condoned.

I have heard the arguments of both the parties at length and perused the relevant record.

9. There is no dispute to the fact that initially the petition was filed on 28.09.2012. On that date, following objections were raised:

- i) "Separate index be filed for each part.
- ii) Petition/applications/annexures/order/power of attorney should be stamped (with Court fees as per new amendment of 2012) (as per new amendment 1% of awarded amount).
- iii) Petition/Application/MOP/Index/Power of Attorney be signed.
- iv) Left side margin of 4 cm be maintained.
- v) Rest of the objections will be raised later on/according to correct classification/nomenclature of the case.
- vi) Fair typed copy of dim and hand written annexures as filed.
- vii) Annexures be made true copy and signed. Annexure number should be marked properly in the index as well as on top of the annexure filed with the petition.
- viii) Page numbering be done properly and it should be done in continuous running number/it should be done numerically/as alpha-numeric page numbers are not allowed/Double page numbering be deleted by proper fluiding.

ix) Vakalatnama be filed/dated and signed by the counsel and all petitioners. Each Advocate must mention their name/address/enrolment number and phone number in vakalatnama. Title on the vakalatnama be checked. Welfare Stamp be affixed. Signature of the client be identified.

x) Court fee be paid @ 1% of awarded amount.

xi) Delay IA is re-filing be filed."

10. The petitioner was permitted to remove all these objections within a period of one week. It is apparent that none of the objections were removed within the said given week. It could be removed finally on 14.02.2013, i.e., after a delay of 128 days. There is no doubt that this Court has the jurisdiction to condone the delay in re-filing, however, this judicial power of Court to condone the delay in re-filing has to be strictly exercised and the petitioner is required to show the delay was not intentional, but for the sufficient reasonable reasons. The petitioner has to show that despite its due diligence and best efforts, the objections could not have been removed prior to the date on which they were finally removed. Apathy, carelessness and sluggishness in removing such objections are not acceptable while condoning the delay in re-filing.

11. The Supreme Court in the case [Union of India Vs. M/s Popular Construction Co.,](#) . has clearly held as under :

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

It therefore is a settled principle of law that provisions of Section 5 of the Limitation Act are not applicable to the petition filed u/s 34 of the Act, while calculating the period of limitation for filing of the petition. There is no dispute to the fact that in the present case, the petition was filed within period of limitation prescribed u/s 34(3) of the Act. The delay has occurred in re-filing on removal of objections.

12. In the case titled as [Brij Mohan Vs. Sunita](#) this Court while dealing with contention of delay in re-filing and discussing the expression "sufficient cause" has clearly held that the court cannot mechanically condone the delay in re-filing the appeal if no reasonable ground is shown at all. In the case [Asha Sharma and Others Vs. Sanimiya Vanijiya P. Ltd. and Others,](#) , the division bench of this court has discussed the situation where the appeal was refiled after expiry of 30 days and has observed as under

"9. It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order 41 Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the registry, is filed after more than 30 days, it shall be considered as a fresh appeal, filed on the date on which it is presented after removal of the defects."

13. In Asha Sharma's case (supra), this court has further observed as under:

"23. It is trite law that Rules of Procedure being handmaiden of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of Procedure are designed to facilitate justice and further its ends.

But, even if we take a rather liberal approach in this matter, we are unable to find any good ground for condonation of delay in filing this appeal. None of the reasons given in the application is convincing or logical. The impression we gather is that the appellants deliberately delayed filing of the appeal so as to prolong the litigation. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, and howsoever mandatory be the nature of the documents, non-filing of which renders the Appeal defective.

We cannot condone the delay merely because an application for condonation of delay has been filed. No court would not like to reject an appeal as time-barred unless there are strong reasons, which compel the court to take such a view. Some indulgence and a liberal view in such matters is well-accepted but to say that the court has no option in the matter and must accept the Memorandum of Appeal irrespective of the nature of the objections and delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.

24. These days we find a growing tendency to file an incomplete Memorandum of Appeal and then take unreasonably long time to remove the defects, even where such defects can be cured within a very short time. Such a practice cannot be said to be conducive to be fair and reasonable and therefore needs to be curbed. An unduly liberal and benevolent approach will only give encouragement to such unfair practices and therefore is not called for. When an Appeal comes up for hearing long after expiry of the prescribed period of limitation, it springs surprise on opposite party, which assumes finality in his favour on account of non-filing of Appeal within a reasonable period.

14. The Division Bench of this court in case [The Executive Engineer \(Irrigation and Flood Control\) Vs. Shree Ram Construction Co.,](#) (which judgment has been upheld by the Supreme Court with the dismissal of SLP) in paras 29 and 41 has observed as under:

29. Reliance on the decision in [Improvement Trust, Ludhiana Vs. Ujaagar Singh and Others,](#) to the effect that "justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold" is of no avail in the backdrop of the A&C Act which decidedly and calculatedly shuts off curial discretion after the expiry of thirty days beyond three months having elapsed from the date on which a copy of the Award had been received by the appealing party. In the context of the A&C Act, it appears to us that liberality in condoning delay in refiling would run counter to the intention of Parliament which has employed plain language to facially prescribe a cut off date beyond which there is no latitude for condonation of delay. And this is for very good reason. Across the Globe, it has been accepted that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business conflicts arise. We think it wholly impermissible to extend or expand the time for concluding judicial proceedings at the second stage, that is, that of refiling, when this is impermissible at the very initial stage, that is, of filing objections to an award. It will be apposite to immediately recall the dicta of [Union of India Vs. M/s Popular Construction Co.,](#) . We can do no better than reiterate the words therein - "the history and scheme of the 1996 Act supports the conclusion that the time- limit prescribed u/s 34 to challenge an award is absolute and inextensible by Court u/s 5 of the Limitation Act". This very reasoning has also been clarified and followed in [Chief Engineer of B.P.D.P./R.E.O., Ranchi Vs. Scoot Wilson Kirpatrick India Pvt. Ltd.,](#) in these words:-

8. The decision in [Union of India Vs. M/s Popular Construction Co.,](#) did not deal with specific issues in this case. In that decision it was held that in respect of "sufficient cause cases" the provisions of Section 34(3) of the Act which are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act"). The position was reiterated in [State of Goa Vs. Western Builders,](#) and also in [Fairgrowth Investments Ltd. Vs. The Custodian,](#) . There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act.

41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the refiling of the Objections. Since this delay crosses the frontier of the statutory limit, that is, three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of

limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms. Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D. Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing Counsel, namely, Ms. Prem Lata Bansal. We have called for the records of OMP No. 291/2008 and we find that the Objections have not been signed by Late Shri R.D. Jolly but by Ms. Sonia Mathur on 9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D. Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of re-filing of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal. CM No. 5212/2009 is also dismissed."

15. Relying on the findings in Shree Ram Construction Co. case (supra), the division bench of this court in case [Delhi Transco Ltd. and Another Vs. Hythro Engineers Pvt. Ltd.,](#) has observed as under:

"9..... If the delay in re-filing is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of more stringent norms while considering the application for condonation of delay in re-filing, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and where the re-filing takes place much after the expiry of the period of three months & thirty days and, that too, without any real justifiable cause or reason."

From the above discussion, it is apparent that although there is no dispute to the fact that this Court can condone the delay in re-filing, but still the petitioner is required to cross the barrier of "sufficient cause" and explain the delay in re-filing of each day. It has also been a settled law, as discussed above, that while dealing with

the contention of delay in re-filing, in view of the expressed provisions of Section 34(3) of the Act, the Courts are not to use the same principle for condonation of delay as are being used u/s 5 of the Limitation Act.

16. It has also been held by the Supreme Court in the case of AIR 1972 1935 (SC) , that the necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period. The principles which forms the basis of this rule is expressed in the maxim "vigilantibus, non dormientibus, jura subvertuntur" (the laws give help to those who are watchful and not to those who sleep).

17. The question that arises is if a party does not file the petition in proper format and objections were raised regarding improper format of petition, and the objections were not removed within the given time by registry, but is done beyond the period of 30 days of raising the objections in such situation should this refiling be considered first filing? The answer lies in Part G of Delhi High Court Rules which relates to the proceedings in the High Court of Delhi and Chapter I, Part A (a) deals with Judicial business relating to presentation and reception of Appeals, Petitions etc. and Rule 5 reads as under:

5. Amendment "The Deputy Registrar Assistant Registrar, Incharge of the Filing counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Asstt. Registrar, in charge of the filing Counter under sub- rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution. Note "The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal.]....

18. It thus empowers the Deputy Registrar, Assistant Registrar, Incharge of the Filing Counter to return the appeal, petition etc. with objections requiring refiling within a time not exceeding 7 days at a time and 30 days in the aggregate. Sub rule (3) specifically and categorically stipulates that if the refiling is done beyond the time allowed under Sub rule 1, it "Shall be considered as fresh institution". The expression used is "shall".

19. This court in Delhi Transco Ltd."s case (supra) has clearly held that such filing shall be considered first filing. Court has observed as under:

11..... Moreover, there is no answer with the appellant to the reliance placed by the learned Single Judge on Rule 5, Chapter "I", Part A of Vol.5 of High Court Rules

and Orders, according to which, the objections should have been re-filed within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution.

.....

20. Having discussed the case law, let us now examine whether the reasons are sufficient enough to condone the delay in re-filing. The first contention is that there was telephonic communication gap between the counsel of the petitioner and the AR of the petitioner. However, in the rejoinder or during the course of arguments, no explanation has come forward for the reason of such communication gap between these two persons. In the era of mass communication, where everybody uses e-mail, fax facility, the telephone, mobiles, taking the plea of communication gap does not seem to be bona fide or just. It certainly does not convince the judicious conscience. It certainly was the duty of the AR of petitioner to remain in touch with Mr. Garg and keep himself updated about the status of the case of petitioner. This conduct of petitioner's AR who is the Managing Director simply reflects his apathy.

21. It is further argued that there was some delay due to the conduct of Mr. Gaurav Garg, Advocate at Delhi as he did not seem to be aware that the Court fee was to be paid as per the amended Court Fee Act (amended with effect from 01.08.2012) which required the payment of Court fee at a rate of 1% of the awarded amount, that is why this objection. It is contended that Mr. Garg, Advocate informed Mr. S.K. Verma, Advocate of petitioner, who was stationed at Bhopal about deficient Court fee, only on 22.11.2012, i.e., after almost two months of filing of the petition, so delay is attributable to Mr. Garg, Advocate. This argument is certainly not acceptable for the reasons discussed above, that it was also the duty of AR, the Managing Director, to keep pursuing his case with his counsel. It is not a case where the petitioner or his AR was misguided. It is the case where for almost two months, petitioner made no efforts to talk to his counsel. Besides, Mr. Garg and Mr. Verma, both are Advocates and both are supposed to be aware of the prevalent laws of the country and an excuse on behalf of an Advocate that he was ignorant of the law is difficult to accept. There is also a maxim that "ignorance of law is no excuse". When ignorance of law is on the part of a litigant is not excusable, can the ignorance of law on the part of Advocates on Record of the petitioner be considered as sufficient ground to condone delays. Besides that, even if I accept the argument that Mr. Garg and Mr. Verma were not aware, that the Court Fee was required to be paid at the rate of 1% calculated on the value of the award, the fact that required Court Fee was at the rate of 1% was conveyed to Mr. Garg by the Registry immediately on filing of the petition. The argument that Mr. Garg communicated about objection of the

Registry regarding deficient court fee only on 22.11.2012 and thus the petitioner cannot be punished for the fault of his advocate has no merit for the simple reason that the petitioner was required to be vigilant and careful of his case. It is strange that the representative of the petitioner, i.e., AR of the petitioner, kept sitting tight, without making any effort to communicate with Mr. Garg either directly or through his counsel Mr. Verma to find out of the status of the petition which was filed on 28.09.2012. No explanation has come forward as to why the petitioner made no effort to find out the status of his case from either Mr. Verma (his counsel at Bhopal) or Mr. Garg (his counsel at Delhi) and kept waiting for the written communication from Mr. Garg. Mr. Garg was just a phone call away. Even otherwise, the conduct of the party shows that having received the information from Mr. Garg vide his letter dated 22.11.2012, Mr. Verma wrote a letter to the Managing Director of the petitioner-company only on 26.11.2012, although both are based in Bhopal. Even thereafter, the Court Fee was allegedly purchased only on 19.12.2012 and filed in the Registry on 19.01.2013, despite the fact that the stamps were made available in Treasury on 02.01.2013. No explanation is coming forward for such delays in filing the Court Fee. No explanation is coming forward of not presenting the application for condonation of delay unless the Registry after raising the objection demanded so. No explanation is also coming forward to the fact that the Registry in view of Rule 5 of High Court Rules treated the petition as filed on 28.01.2013 since the objections were removed beyond 30 days.

22. The petitioner has relied upon Collector, Land Acquisition, Anantnag (supra), wherein it has been held by Supreme Court that "Court should adopt a liberal and justice oriented approach". It is apparent that the Supreme Court has given these findings while dealing with an application u/s 5 of Limitation Act in a civil suit. Here, the Court is dealing with a petition which has been filed u/s 34(3) of the Act which provides a period of limitation not extendable beyond 120 days and the Supreme Court in the case of Popular Constriction (supra), has clearly held that provisions of Section 5 of Limitation Act are not applicable to the cases filed u/s 34 of the Act. Also, as discussed above in the case of Executive Engineer (supra), Supreme Court has dealt with the maxim "that justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities like delay in filing the petition" and has held that this maxim is of no avail in the backdrop of the Arbitration and Conciliation Act and the liberality in condoning delay in refiling would run counter to the intention of Parliament. Moreover, in the case of Collector, Land Acquisition, Anantnag (supra), the delay was only of four days which, in the facts and circumstances of the case, was condoned.

In the case before me, the delay is of 128 days which the petitioner has apparently failed to explain sufficiently. Therefore, the case law relied upon by the petitioner is of no help to him.

23. Learned counsel for the petitioner has relied upon the case of [Delhi Development Authority Vs. Amita Nand Aggarwal through its Proprietor Shri S.K. Gupta](#), which is reproduced as under:-

"9. In all the judgments, which have been relied upon by the respondent there was extraordinary delay in either re-filing the Objections or in filing the Objections or after the Objections were returned they were either lost or fresh Objections were not filed in reasonable time. The facts of the present case are altogether different. In the present case, the Objections were filed though beyond 90 days but within the period of 120 days and the objections raised by the Registry were also removed within the period of two weeks. I consider, since the Petition/Objections u/s 34 of the Act was returned for want of court fees and certain technical reasons and the objections raised by the Registry were complied with and after rectification, the Petition was re-filed within a reasonable period, the Petition must be considered to have been filed on the original date when it was filed in the Registry and not on the date when it was re- filed after removing objections. Making up a deficiency of court fees or signatures on the vakalatnama etc. are not material to the admission of the Petition u/s 34 of the Act. Even u/s 149 CPC, an application can be made before the Court seeking time to file court fees and saving the limitation."

The present findings have been given by the Supreme Court on the fact that there was delay of only two weeks in re-filing and in the facts and circumstances of that case and for the reasons given, the Court condoned the delay of two weeks.

24. In the present case, as discussed above, there is a delay of 128 days in removal of the objections. The findings in the case relied upon, therefore, are not applicable on the facts and circumstances of the case.

25. For the foregoing reasons, I hold that the petitioner has failed to show the sufficient reasons of the delay of 128 days in re-filing.

The application for condonation of delay is hereby dismissed.

O.M.P. 156/2013

Since the present petition is barred by limitation as discussed above, the petition is dismissed.