MANU/DE/9820/2007

Equivalent Citation: (2007)ILR 2Delhi59

IN THE HIGH COURT OF DELHI

F.A.O. (OS) No. 47/2005 and E.F.A. (OS) No. 9/2005

Decided On: 18.04.2007

Appellants: National Projects Constructions Corporation Limited
Vs.
Respondent: Bundela Bandhu Constructions Company

Hon'ble Judges/Coram:
Vikramajit Sen and J.P. Singh, JJ.

Counsels:
For Appellant/Petitioner/plaintiff: Santosh Kumar, Adv.

For Respondents/Defendant: Seema Bengani and Anshul Singh, Advs.

Case Note:
Arbitration - Condonation of delay - Section 34 of the Arbitration and Conciliation Act, 1996 - Single Judge dismissed Appellant's Objections under Section 34 of the Act on grounds that they had been filed beyond period stipulated by statute - Hence, this Appeal - Whether, application seeking condonation of delay in filing Objections to Award was maintainable and could be granted by Court - Held, Court could not possess any power to condone delay after lapse of thirty days from expiry of three months from date of delivery of a copy of Award on parties - Precedents exhorting liberal approach especially where State did not apply to A & C Act which had not only taken care to generally restrict interference by a Civil Court - Section 32(5) of A & C Act could be strictly complied with and Award could be served on officer concerned by Arbitrator - Therefore, companies, Order XXIX of Code of Civil Procedure would come into operation - Since, Appellant was incorporated under Companies Act it could be unequivocally and categorically clear from record that copy of Award was either served on Secretary or Director or Principal Officer or delivered at Registered Office of Appellant in consonance with Orders XXXIX Rule 2 of the Code - Thus, no documents was exist in this context - Stringency and rigidity of provision made it essential that contemplated delivery/service could be meticulously and properly effected - Thus, Order of Single Judge was set aside on grounds that provisions of A & C Act pertaining to service of Award on party had not been complied with - Appeal allowed.

Ratio Decidendi:
"Court shall not possess any power to condone delay after lapse of period from date of delivery of copy of Award on parties."

JUDGMENT

Vikramajit Sen, J.

1. This Appeal assails the Order of the learned Single Judge passed on 9.12.2004 dismissing the Appellant's Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'A & C Act') on the grounds that they had been filed beyond the period stipulated by the statute. The Application for condoning the delay in filing these Objections has been dismissed holding that the Court did not possess any power to condone the delay. The learned Single Judge has applied the Judgment of the Supreme Court in Union of India v. Popular Construction Co. MANU/SC/0613/2001 : (2001) 8 SCC 470 : 2001(6) Scale 657, and in particular paragraph 12 thereof. Having dismissed the Objections the learned Single Judge had also directed that the Bank Guarantees retained by the Respondent/Judgment Debtor should also be returned on or before 15.1.2005.

2. The assailed Award purports to have been signed on 20.1.1997. Execution Proceedings have inexplicably been initiated by the Respondent after the passage of seven years thereafter. The Appellant/Objector categorically contends that a copy of the Award was not delivered to it at any time, even though this was statutorily required to be done. Section 31(5) of the A & C Act states that - "After the arbitral award is made, a signed copy shall be delivered to each party". The further argument on behalf of the Appellant is that it learnt of the passing of this Award only on 23.3.2004 when it received notice in the Execution Proceedings (Ex. P. 4/2004). The Appellant thereafter states that "files of the Execution Case were subsequently inspected, a copy of the award obtained from the Respondent/Claimant and now the objections under Section 34 of the Arbitration and Conciliation Act, 1996 are being filed". The Objections under Section 34 of the A & C Act challenging the Award are dated 31.7.2004 of which the supporting Affidavit is dated 30.7.2004. They came to be eventually filed in the Registry of this Court on 7.8.2004. An application under Section 34 of the A & C Act read with Section 5 of the Limitation Act for condonation of delay, which ought to have accompanied the Objections, appears to have been filed on 4.10.2004. It is obvious, therefore, that even though the Award visited the Appellant with a liability running into several lacs of rupees which after interest would run into crores of rupees, the conduct of the Appellant manifests repeated and reckless carelessness. Even in such cases the request that is repeatedly made to the Court is that the delay and inept handling by Government organisations should at the most be looked upon askance, and the Court should bail out and rescue a slothful party from the legal grave that it has dug for itself. We should not overlook the fact that Parliament has made no distinction between Government and private persons so far as the law of limitation is concerned. Experience has shown that latitude given by the Courts has only come to be misused; delay of some days of yore, has been replaced by delay of months and years.

3. It is in these circumstances that we have to decide whether the application seeking condonation of delay in filing Objections to an Award is maintainable and could be granted by the Court. The learned Single Judge has applied paragraph 12 of Popular Construction, which reads as follows:

> 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.

4. The regime of the repealed Arbitration Act, 1940, was that an Award had to metamorphose itself into being the 'rule of Court' before it attained executable efficacy. In the scheme of the A & C Act an Award can be enforced subject to the disposal of any Objections that may be filed. Civil Courts have a limited role to play. Even in the comparatively fluid format of the repealed statute, Courts had ruled that there was no scope for enlarging time or condoning delay in approaching the Court by way of Objections to an Award, which position would a fortiori continue in the prevailing statutory scheme. The conclusion reached in M/s. Enkay Construction Company. The Vice Chairman, DDA MANU/DE/0596/2000 : 86 (2000) DLT 748 : 2000(6) AD (Delhi) 530 was that the uniform view is that if Objections are filed beyond the period of 30 days as laid down in the Arbitration Act, 1940, they cannot be looked into since the Court does not possess power to entertain Applications under Section 5 of the Limitation Act. The opinion of various High Courts had been considered. Reliance had been garnered from these paragraphs of Madan Lal v. Sunder Lal MANU/SC/0346/1967 : AIR 1967 SC 1233:

> (7) This analysis of the relevant provisions of the Act contained in Chap. II which apply mutatis mutandis to arbitrations of the other two types shows that the Court has to pronounce judgment in accordance with the award if it sees no cause to remit the award or any of the matters referred to arbitration for reconsideration, or if it sees no cause to set aside the award. The Court has to wait for the time given to a party to make an application for setting aside the award and where such an application has been made the Court has to decide it first and if it rejects it the Court proceeds to pronounce judgment according to the award. It is clear, therefore, from Section 17 that an application to set aside the award is contemplated therein and it is only when no such application has been made within the time allowed or if such an application has been filed and has been rejected that the Court proceeds to pronounce judgment in terms of the award. The Act, therefore, contemplates the making of an application to set aside an award and the grounds on which such an application can be made are to be found in Section 30. The grounds on which an application can be made for setting aside the award are-(a) that an arbitrator or umpire has misconducted himself or the proceedings, (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35, or (c) that an award has been improperly procured or is otherwise invalid. These are the only grounds on which an award can be set aside under Section 30 and it will be seen that if a party wants an award to be set aside on any of these grounds it has to make an application. Thus any party wishing to have an award set aside on the ground that it was improperly procured or otherwise invalid has to make an application. We may also refer to Section 32 which lays down that "notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.
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> (8) It is clear, therefore, from the scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in Section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in Section 30 of the Act. It may be conceded that there is no special form prescribed for

making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation.

(9) It is not in dispute in the present case that the objections raised by the appellant were covered by Section 30 of the Act, and though the appellant did not pray for setting aside the award in his objection that was what he really wanted the Court to do after hearing his objection. As in the present case the objection was filed more than 30 days after the notice it could not be treated as an application for setting the award, for it would then be barred by limitation. The position thus is that in the present case there was no application to set aside the award on grounds mentioned in Section 30 within the period of limitation and, therefore, the Court could not set aside the award on those grounds. There can be no doubt on the scheme of the Act that any objection even in the nature of a written-statement which falls under Section 30 cannot be considered by the Court unless such an objection is made within the period of limitation (namely, 30 days), though if such an objection is made within limitation that objection may in appropriate cases be treated as an application for setting aside the award.

(10) Learned Counsel for the appellant, however, urges that Section 17 gives power to the Court to set aside the award and that such power can be exercised even where an objection in the form of a written-statement has been made more than 30 days after the service of the notice of the filing of the award as the Court can do so suo motu. He relies in this connection on Hastimal Dalichand v. Hiralal Motichand MANU/MH/0069/1954 : AIR 1954 Bom 243 and Saha and Co. v. Isharsingh Kripalsingh MANU/WB/0107/1956 : AIR 1956 Cal 321 (FB). Assuming that the Court has power to set aside the award suo motu, we are of opinion that that power cannot be exercised to set aside an award on grounds which fall under Section 30 of the Act, if taken in an objection petition filed more than 30 days after service of notice of filing of the award, for if that were so the limitation provided under Article 158 of the Limitation Act would be completely negatived. The two cases on which the appellant relies do not in our opinion support him. In Hastimal's case MANU/MH/0069/1954 : AIR 1954 Bom 243, it was observed that "if the award directs a party to do an act which is prohibited by law or if it is otherwise patently illegal or void it would be open to the Court to consider this patent defect in the award suo motu, and when the Court acts suo motu no question of limitation prescribed by Article 158 can arise." These observations only show that the Court can act suo motu in certain circumstances which do not fall within Section 30 of the Act. Saha and Co.'s case MANU/WB/0107/1956 : AIR 1956 Cal 321(FB), was a decision of five Judges by a majority of 3:2 and the majority judgment is against the appellant. The minority judgment certainly takes the view that the non-existence or invalidity of an arbitration agreement and an order of reference to arbitration may be raised after the period of limitation for the purpose of setting aside an award because they are not grounds for setting aside the award under Section 30. It is not necessary in the present case to resolve the conflict between the majority and the minority Judges in Saha and Co.'s case, MANU/WB/0107/1956 : AIR 1956 Cal 321 (FB), for even the minority judgment shows that it is only where the grounds are not those falling within Section 30, that the award may be set aside on an objection made beyond

the period of limitation, even though no application has been made for setting aside the award within the period of limitation. Clearly, therefore, where an objection as in the present case raises grounds which fall squarely within Section 30 of the Act that objection cannot be heard by the Court and cannot be treated as an application for setting aside the award unless it is made within the period of limitation. Saha and Co.'s case, MANU/WB/0107/1956 : AIR 1956 Cal 321 (FB), therefore, also does not help the appellant.

5. Reliance has been placed by Mr. Santosh Kumar, learned Counsel for the Appellant, on Union of India v. Tecco Trichy Engineers and Contractors MANU/SC/0214/2005 : (2005) 4 SCC 239 which has been decided without reference to Popular Construction. Their Lordships observed as follows:

8. The delivery of an arbitral award under Sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33 (1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

9. ...

10. In the present case, the Chief Engineer had signed the agreement on behalf of the Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during proceedings of the arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by the Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the arbitration, as the subject-matter of arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the Arbitral Tribunal had decided the issue before it, unless they are all brought to his notice by the officer dealing with that arbitration and who is in charge of those proceedings. Therefore, in our opinion, service of the arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute the starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19-3-2001 would be the starting point of limitation

to challenge the award in the Court.

11. We cannot be oblivious of the fact of impersonal approach in the government departments and organisations like Railways. In the very nature of the working of government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have taken place unless the Chief Engineer had received the copy of the award when only the delivery of the award within the meaning of Sub-section (5) of Section 31 shall be deemed to have taken place.

12. The learned Single Judge of the High Court as also the Division Bench have erred in holding the application under Section 34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of Sub-section (3) of Section 34. There was a delay of 27days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under Sub-section (1) of Section 34 of the Act filed on behalf of the appellant deserves to be heard and decided on merits.

13. The appeal is allowed. The application under Section 34(1) filed on behalf of the appellant shall stand restored in the High Court, to be heard and decided in accordance with law by the learned Single Judge. No order as to costs.

6. A proper perusal of this Judgment will disclose that their Lordships were primarily influenced by the fact that a copy of the Award had not been served on the officer concerned with the dispute. The question of there being 24 days delay only was obviously made en passant since otherwise it may have become irreconcilable with the Popular Construction. The ratio of Tecco Trichy is that Award should be delivered to the officer concerned and to this extent it is of invaluable assistance to the Appellant.

7. Learned Counsel for the Appellant has next drawn our attention to the decision of the Apex Court in State of Goa v. Western Builders MANU/SC/2967/2006 : (2006) (6) Scale 574, which has also been relied upon by learned Counsel for the Respondent. Popular Construction was brought to their Lordships notice along with National Aluminum Co. Ltd. v. Pressteel and Fabrication (P) Ltd. MANU/SC/1082/2003 : (2004) 1 SCC 540 : 2003(10) Scale 1062. Tecco Trichy, however, was not cited and hence not considered. Their Lordships took note of the fact that Section 43 of the A & C Act envisaged the application of the Limitation Act, 1963 but in view of Section 34 of the A & C Act read with Section 29(2) of the Limitation Act, "the applicability of Section 5 of Limitation will stand excluded and the application for condonation of delay upto a period of 30 days can be made to the Court and not beyond that". Their Lordships thereafter took note of the fact that there was no provision in the A & C Act dealing with the bonafide filing of an action in a wrong forum. In our view, in this context it is certainly arguable that principles of prescription may have no role to play if Objections have been filed within the prescribed period regardless of the fact that the filing is in a Court not properly possessing jurisdiction. In such cases principles analogous to Rules 10 and 10A of Order VII of the Code of Civil Procedure would require the return of the Objections with liberty granted to the Objector to file them in the proper forum within the period granted by the Court. In these circumstances either of the Courts would not actually have to condone the delay in filing the Objections. On the contrary, the return would facilitate and ensure that the Objections are dealt with and decided by the competent Court of jurisdiction. It was on that reasoning that their Lordships pronounced in Tecco Trichy

that Section 14 of the Limitation Act, 1963 is applicable to the A & C Act, 1996. This Judgment, therefore, is not a precedent for the proposition that delay in filing Objections even beyond the period of 120 days from the date on which the Award had been delivered/served on the concerned party can be condoned.

8. Mr. Santosh Kumar, learned Counsel for the Appellant, has sought to rely on M/s. Transparent Packers v. The Arbitrator-cum-Managing Director MANU/SC/3094/2000 : JT 2000(7) SC 574, in our understanding which has scarce relevancy. All that was observed was that a deponent need not invariably enter the witness box for his affidavit to attract evidentiary value. The dismissal of the application seeking condonation of delay only on this ground was reversed. Thereafter reference has been made to State of Haryana v. Chandra Mani MANU/SC/0426/1996 : (1996) 3 SCC 132 placing special emphasis on the observations to the effect that the State cannot be put on the same footing as an individual. Their Lordships had condoned a delay of 109 days in filing of the LPA before the High Court. This decision is of no assistance to the Appellant since the proviso to Section 34(3) of the A & C Act vests power and discretion in the Court to entertain application for setting aside an Award filed after three months of the delivery of the arbitral Award on the concerned party, only for another thirty days but not thereafter. While condoning delay may be possible in Appeals, discretion so far as Objections to an Award is concerned, stands extinguished after thirty days post three months of delivery of the Award.

9. In this analysis we are of the opinion that there is no scope to submit that the Court possesses powers to condone delay beyond thirty days reckoned from the expiry of three months from the date on which a signed copy of the Award is delivered to the parties. Learned Counsel for the Respondent has drawn attention to the observations found in Indian Rayon Corporation Ltd. v. Raunaq and Company Pvt. Ltd. MANU/SC/0195/1988 : (1988) 4 SCC 31, made in the context of the Arbitration Act, 1940. The Court was called upon to rule on Section 14(2) of the erstwhile Arbitration Act, the provisions of which are materially different. Briefly, the observations to the effect that it is the service of the notice and not the mode or method of the service that is important would stand appreciably diluted in view of the statutory obligation contained in Section 32(5) of the A & C Act.

10. We have already mentioned that liability in terms of the Award runs into lakhs of rupees. The Appellant has consistently taken the stand that a copy of the Award has not been served on them. The hiatus of almost seven years between the signing of the Award on 20.1.1997 by the learned Arbitrator and initiation of Execution Proceedings on 7.1.2004 can be ignored only at the peril and expense of justice. The Court needs to be fully satisfied of events that transpired within this period. No explanation is forthcoming as to why Execution Proceedings were initiated after seven long years. The observations in Phonographic Performance Ltd. v. Department of Trade and Industry (2004) EWHC 1795 369 are apposite and read as follows:

> Whilst in the past, it would not be appropriate to look at delay of a party commencing proceedings other than by judicial review within the limitation period in deciding whether the proceedings are abusive, this is no longer the position. Whilst to commence proceedings within a limitation period is not in itself an abuse, delay in commencing proceedings is a factor which can be taken into account in deciding whether the proceeding are abusive. If proceedings of a type which would normally be brought by judicial review are instead brought by means of an ordinary claim, the court in deciding whether the commencement of the proceedings is an abuse of process, can taken into account whether there has been unjustified delay in initiating the

proceedings.

11. The Award has been filed in Execution Proceedings bearing Ex. 4/2004 by the Decree Holder, along with EA 39/2004 dated 27.1.2004. It has not been received directly from the Arbitral Tribunal. The Registry has reported that the son of the deceased Arbitrator has stated that the arbitration files had been handed over to the concerned parties/Advocates. Material details are conspicuously missing. The Award, which has been purportedly signed by the Sole Arbitrator only on the last page, has not been engrossed on adequate/proper stamp paper. The Sole Arbitrator died on 14.3.2002. Learned Counsel for the Appellant has submitted that several questions have been raised in the Objections, which have not received jural attention since the learned Single Judge has held that the subject Objections are time-barred and hence do not require adjudication.

12. While the Court does not possess power to condone delay or enlarge time beyond 120 days (3 months plus thirty days) from the date on which the arbitral Award was delivered to the party desirous of filing Objections to the Award, the stringency and rigidity of this provision makes it essential that the contemplated delivery/service must be meticulously and properly effected. In saying so we do not intend to impart a punctilious or fastidiously formal connotation to the word 'delivered' employed in Section 31(5) of the A & C Act but nevertheless there must be substantial and authentic compliance thereunder obviously at the instance of the Arbitral Tribunal itself. However, as has happened in the present case, it would be of no legal consequence if, while inspecting Court records, the advocate of the party learns of the existence of a 113 page Award. What if the Advocate thereafter slumbered over the matter. Would that foreclose the defence of the party concerned, in respect of whom there is a statutory obligation that a copy of the Award should directly be delivered upon it. The answer cannot but be in the negative. In Union of India v. Surendra Kumar MANU/DE/0977/1995 : 61(1996) DLT 42 (DB) in the context of Arbitration Act, 1940, the Division Bench of this Court observed as follows:

> We have considered the submission of learned Counsel for the respondent but we are of the opinion that there was no proper service of the notice of the filing of the award on the appellant. The object of giving notice under Section 14(2) of the Act is to provide an opportunity to a party to submit objections to the award filed by an Arbitrator within a period of 30 days of the receipt of a notice in respect of filing of the award as per Article 119 of the Limitation Act. What is essential is that notice should post him with the knowledge of the award filed by the Arbitrator in a particular matter. Notice should therefore, specify such details as would enable a party to identify the arbitration case, otherwise the notice will not serve the purpose for which it was given and will not meet the requirements of law. In the instant case the notice does not specify the name of the work, the division or department to which the matter pertained or even the contract number. It is needless to point out that Ministry of Urban Development has a very large area of operation covering several departments of the Government including C.P.W.D., which itself has several divisions spread all over the country. Therefore, unless the notice of filing of the award gives the details of the arbitration matter in which award is given, it cannot be considered as a proper notice in accordance with law. Besides, it was not enough to direct notice of the filing of the award to the Secretary to the Govt. of India, Ministry of Urban Development particularly when the notice failed to disclose the material particulars of the matter. In the circumstances, the notice ought to have been sent to the Executive Engineer, who was Engineer-in-charge of

the work, and was the person who had signed the contract on behalf of the Union of India and was dealing with the matter. Therefore, it was necessary that he should also have been arrayed as a party respondent in the matter. Merely arraying Union of India and sending the notice to the Secretary, Ministry of Urban Development would not be effective service as the Secretary to the Govt. of India was not aware of the case nor he was furnished with the particulars thereof. He would also be ignorant of the proceedings before the Arbitrator which culminated in the award. Moreover in the present case as already noted it would be difficult for the Secretary to the Govt. of India to link up the notice of the filing of the award to the matter which was subject matter of the Arbitration proceedings as the notice does not give any details except that the award was rendered by Mr. S.S. Juneja. Since no particulars of the case were given, the office of the Secretary, Govt. of India, Ministry of Urban Development made an endorsement on the notice itself to the effect that full particulars of the case were not given and the notice was received without enclosures. Even a letter was written to the Registrar by the office of the Secretary, Ministry of Urban Development, Govt. of India for seeking particulars of the matter. In these circumstances, therefore, failure to serve a notice of the filing of the award on the Executive Engineer amounts to violation of the principles of natural justice. It is well settled that where the principles of natural justice have been violated in passing an order by the Court, the same can be set aside under the inherent powers. It is also well settled that no person can be prejudiced by the act of the Court. Therefore, when the notice of the filing of the award was not given to the Executive Engineer and no proper notice was given to the Secretary to the Government of India. Ministry of Urban Development, the time for filing the objections did not commence and could not have therefore, expired. In such an event the Court will have inherent jurisdiction to set aside the ex-parte decree.

13. In R.P. Arora v. Union of India 1999 AD 679 : 1999 (82) (Delhi) 686 one of us had declined to accept that notice of the filing of the Award had been correctly effected since it had not been served on the concerned official, that is, the Executive Engineer, Construction Division-II, CPWD, New Delhi. In those circumstances the officer concerned was held to have notice of the filing of the Award effective from the date of the pronouncement of the Judgment. In Hi-Rise Builders (Pvt.) Ltd. v. Alpha Woven Labels (India) Pvt. Ltd. MANU/DE/0175/2000 : AIR 2000 Delhi 126 a Single Judge held that failure to mention the number of the Suit would result in the service being irregular. The same approach commends itself to us in the present case also, namely, that the Appellant must be deemed to have been delivered a copy of the Award today. If this is so, the Objections, being already on the record, cannot be held to be time-barred.

14. It is in the above analysis that we record the following conclusions: Firstly, that the Court does not possess any power to condone delay after the lapse of thirty days from the expiry of three months from date of the delivery of a copy of the Award on the parties. It would be absurd to contend that service of the Award on one party would be legally efficacious on the opposite contestant. Precedents exhorting a liberal approach especially where the State is concerned do not apply to the A & C Act which has not only taken care to generally restrict interference by a Civil Court, but after laying down a period of 30 days in the proviso to Section 34(3) has taken pains to state that thereafter no scope of enlargement is possible. Secondly, we hold that Section 32(5) of the A & C Act must be strictly complied with and the Award must actually be served on the officer concerned by the Arbitrator. In the case of companies, Order XXIX of the

Code of Civil Procedure would come into operation. The facts of the case in hand are indeed singular. The Award purports to have been signed on 20.1.1997. The Award has been filed in Court by the Claimant. The records of the Arbitral Proceedings have not seen the light of day. There is not even an iota of evidence that the Arbitrator had dispatched a copy of the Award to the Appellant.

15. Since the Appellant is incorporated under the Companies Act, it must be unequivocally and categorically clear from the record that a copy of the Award was either served on the Secretary or Director or Principal Officer or delivered at the Registered Office of the Appellant in consonance with Orders XXXIX Rule 2 of the Code of Civil Procedure. No documents exist in this context

16. It is our understanding that wherever a time-bound schedule is laid down by a statute its terms should be strictly complied with before adverse orders can be passed. Under Order XXXVII of the Code of Civil Procedure 'Leave to Defend' is to be applied for within a specified time. Keeping this in mind in KLG Systel Ltd. v. Fujitsu ICIM Ltd. 84 (2000) DLT 54 this Court had declined to accept the contention of the plaintiff that Summons had been properly served on the Defendant under Order XXXVII Rule 3(2) as the Process Server had not made any attempt to personally serve the party concerned. Hence, it was opined that the question of condonation of delay in filing the 'Leave to Defend' had not arisen at all. A similar approach was pursued in Pleasant Securities and Finance Ltd. v. NRI Financial Services Limited 2000 AD 768.

17. For these reasons the Appeal succeeds. The Order of the learned Single Judge is set aside on the grounds that the provisions of A & C Act pertaining to service of the Award on the party has not been complied with. The result is that time for filing of the Objections has not commenced to run. Therefore, the question of delay had not arisen, so as to warrant the application of Popular Construction. The effect will be that OMP 261/2004 shall now be decided on its merits in accordance with law. IA 8040/1004 shall stand disposed of as infructuous. EFA (OS) 9/2005 also stands allowed. Impugned Order dated 9-122004 is set aside. Ex. P. 4/2004 would be decided simultaneously with or alongwith OMP 261/2004.

18. The parties shall bear their respective costs.