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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on:-24.02.2020
Date of Decision:- 18.03.2020

+ O.M.P. (COMM) 399/2019 & IA No.13333/2019 (stay)

UNION OF INDIA

..... Petitioner

Through: Ms. Pinky Anand, ASG with
Mr.Bhagwan Swarup Shukla, Mr. Rajesh
Ranjan, Mr. Joel, Mr. Hemant Arya, Ms.
Kirti Dua, Mr. Sumit Teterwal,
Ms.Rinky, Mr.Sharvan Kumar &
Mr.Gokul Sharma, Advs.

versus

BHARAT BIOTECH INTERNATIONAL LTD. Respondent

Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Vipin Nair, Mr.P.B. Suresh,
Mr.Karthik Jayashankar, Mr.Sughosh
Subramanyam Neergundh, Advs.

+ O.M.P. (COMM) 407/2019 & IA Nos.13543/2019 (stay)

UNION OF INDIA

..... Petitioner

Through: Ms. Pinky Anand, ASG with
Mr.Bhagwan Swarup Shukla, Mr. Rajesh
Ranjan, Mr. Joel, Mr. Hemant Arya, Ms.
Kirti Dua, Mr. Sumit Teterwal,
Ms.Rinky, Mr.Sharvan Kumar &
Mr.Gokul Sharma, Advs.

versus

SERUM INSTITUTE OF INDIA LIMITED Respondent

Through: Mr. Abhinav Vasisht, Sr. Adv. with Mr.
Vikram Dhokalia, Adv.

+ O.M.P. (COMM) 408/2019 & IA Nos.13546/2019 (stay)

UNION OF INDIA

..... Petitioner

Through: Ms. Pinky Anand, ASG with
Mr.Bhagwan Swarup Shukla, Mr. Rajesh

Ranjan, Mr. Joel, Mr. Hemant Arya, Ms. Kirti Dua, Mr. Sumit Teterwal, Ms.Rinky, Mr.Sharvan Kumar & Mr.Gokul Sharma, Advs.

versus

PANACEA BIOTECH LIMITED Respondent
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Kawal Nain, Ms.Kavita & Mr.Rohit Dadwal, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

I.A. 13334/2019 (delay of 50 days in re-filing) in O.M.P. (COMM) 399/2019

I.A. No.13544/2019 (delay of 55 days in re-filing) in O.M.P. (COMM) 407/2019

I.A. No.13547/2019 (delay of 50 days in re-filing) in O.M.P. (COMM) 408/2019

1. The present decision disposes of similar applications filed by the Union of India seeking condonation of delay in re-filing the three petitions preferred under Section 34 of the Arbitration and Conciliation Act ('the Act'), in each of which a challenge has been laid to three different arbitral awards all dated 14.03.2019.

2. Although all the three applications are based on identical facts, the delay in question is slightly different. The delay of which condonation is sought is 50 days each in O.M.P. (COMM) 399/2019 and O.M.P. (COMM) 408/2019, while it is 55 days in O.M.P. (COMM) 407/2019.

3. In each of these petitions, condonation of delay in re-filing is sought primarily on the ground that a duly signed petition along with the affidavit, the statement of truth and Vakalatnama was filed on 31.05.2019

before the statutory period of limitation of 90 days as prescribed under Section 34(3) of the Act had expired. On the other hand, the respondents have vehemently opposed these applications primarily on the ground that these petitions, when originally filed within the statutory period of limitation, were merely a 'bunch of papers' and could not be treated as being valid in the eyes of law. It is contended that a complete and valid petition was filed only on 18.09.2019 by which date the limitation period of 3 months and 30 days as prescribed under Section 34 (3) of the Act had already expired.

4. In view of the preliminary objections raised by the respondents, the learned senior counsel for the parties have been heard at length on the aspect of condonation of delay in re-filing of the petition.

5. Before referring to the grounds on which condonation is sought, the factual matrix surrounding the delay caused in these matters may be noted. For the sake of convenience, only the facts of OMP(COMM.) 399/2019 are being referred to.

6. The impugned award was passed by the learned Arbitral Tribunal on 14.03.2019 and the petition under Section 34 of the Act assailing the same came to be filed by the petitioner on 31.05.2019. The petition as filed comprised of 83 pages and admittedly neither included a copy of the impugned Award nor was accompanied by any application seeking exemption from filing the same. The Registry raised 25 objections on this filing, which are reflected in the log information dated 04.06.2019. On 01.07.2019, when the courts re-opened after summer vacations, the petition was returned under objections, which was subsequently re-filed on 11.07.2019 without any corrections. When the petition was again returned under objections, it was re-filed on 31.07.2019 with some drastic alterations and was, at this point, running into 430 pages.

7. Upon further defects being pointed out, the petition was re-filed on 12.09.2019 whereupon the Registry raised further objections and the petition was finally re-filed for the fifth time on 18.09.2019, by which date the petition had increased to 441 pages, along with an application for condonation of delay in re-filing the petition, which as noted hereinabove is the subject matter of the present controversy.

8. This application which barely runs into four paragraphs gives the reasons for delay in paragraph 3, the contents whereof read as under:-

“3. It is respectfully submitted on account of several defects point out by registry in voluminous appeal filed it took long time to came the defect and some extra days wore in getting file approved for Union of India. One of the defects pointed out by registry was to give email address the respondents which against took same extra days to objection removed.”

9. Though the petitioner subsequently filed an additional affidavit on 05.11.2019 in an effort to explain the reasons for delay, but the same merely recounted the particulars of the re-filings.

10. In support of the application, Ms. Pinky Anand, learned ASG appearing on behalf of the petitioner submits that the petition was filed within the prescribed statutory period of 90 days as the award dated 14.03.2019 had been assailed by way of the present petition on 31.05.2019, therefore the delay was only occasioned in re-filing the petition which ought to be condoned in view of the reasons stated in the application and the additional affidavit. She submits that the initially filed copy of the petition was complete and was not only duly signed in accordance with law but was also supported by an affidavit, a statement of truth and a duly executed *vakalatnama*; therefore, merely because the Registry kept raising defects thereon from time to time, which the petitioner diligently removed, the same neither renders the filing *non est*,

nor indicates any negligence on the petitioner's part in filing the petition nor render the petition as being barred by limitation.

11. She further submits that the failure to file a copy of the impugned award along with the petition was also not fatal. In support of this contention, she places reliance on Chapter IV of the Delhi High Court (Original Side) Rules, 1967 issued by this Court in pursuance to the Indian Arbitration Act, 1940 to contend that it was never the intention of the legislature to insist on a copy of the arbitral award at the very first instance. She submits that even the Delhi High Court (Original Side) Rules, 2018 do not mandate the same but, instead, adopt the existing practice directions with respect to arbitration, as contained in the Arbitration and Conciliation Act, 1996 which also do not necessitate appending the copy of the arbitral award to the Section 34 petition. Rather, the practice directions enjoin the arbitral tribunal to transmit the arbitral record, including the award, to the Court once notice is issued in a Section 34 petition. She, therefore contends that on a combined reading of the practice directions issued on 30.08.2010 and 16.01.2015 also do not require the impugned award to be filed along with a Section 34 petition, therefore the non-filing of the impugned award in the present case, alongwith the original petition filed on 31.05.2019, is inconsequential.

12. She finally submits that the parameters for condonation of delay in re-filing the petition are very different from those applicable for condonation of delay in filing the petition. She submits that once the filing of a petition is within time, the Court ought to apply a liberal yardstick while considering the prayer for condoning the delay in re-filing the same. Any said delay ought to be condoned by the Court, provided that the applicant shows sufficient cause for the same, which duty has

duly discharged by the petitioner in the present case. In support of this contention, she places reliance on *Northern Railway vs. Pioneer Publicity Corporation Private Limited* (2017) 11 SCC 234, *M/s. Himachal Futuristic vs. I.T.I. Limited* 2017 SCC OnLine Del 8522 and *Indian Statistical Institute vs. M/s Associated Builders and Others* (1978) 1 SCC 483.

13. On the other hand, Mr. Sandeep Sethi, learned senior counsel for the respondent while opposing the application, submits that the Section 34 petition as originally filed on 31.05.2019 could, at the most, be considered as a 'bunch of papers' as it suffered from critical deficiencies which cannot be disregarded by this Court; a copy of the arbitral award which the petition sought to impugn was absent; the petition failed to bear the requisite signatures on each page therein, as mandatorily required; the affidavit accompanying the petition refers to documents at serial nos. 3 (a) to (w) which were never annexed; the petition was filed without any court fees, to name a few. To make matters worse, the vakalatnama annexed to the initially filed petition on 31.05.2019 was undated and could not, therefore, be treated as a valid vakalatnama. He submits that even the statement of truth accompanying the petition bore incomplete information. This is revealing of the petitioner's intent from the very beginning, as paragraphs 3 and 6 of the aforesaid statement of truth were intentionally left blank by the petitioner with the possible hope of changing the basic structure of the originally filed petition. Lastly, the petition, as filed on 31.05.2019, comprised of 83 pages which were subsequently increased to 441 pages which, he contends virtually amounted to altering the entire petition which is not permissible in law.

14. Mr. Sethi thus contends that the initial filing by the petitioner on 31.05.2019 was merely a dummy filing, which bore references to

documents which are completely alien to the present disputes. Similarly, the second filing on 11.07.2019 was also a dummy filing as at that instance, the petitioner had merely proceeded to re-file the entire petition without curing a single defect raised by the Registry on 04.06.2019, all of which were blatant attempts to defeat the rights accruing to the respondent in the interregnum. He further submits that the third re-filing on 31.07.2019, notwithstanding the increase in the number of pages of the petition to 430, was defective as it neither adhered to the statutorily prescribed period of limitation of 3 months and 30 days nor addressed the objections raised by the Registry. The fourth and fifth re-filings were effected on 12.09.2019 and 18.09.2019 respectively, this time with 441 pages, and led to the petition being listed for hearing before this Court on 24.09.2019. By placing reliance on the decisions of this Court in *Delhi Development Authority v. Durga Construction Co.* 2013(139)DRJ 133(DB), *Oriental Insurance Co. Ltd. Vs. Air India Ltd.* 2019 SCC OnLine Del 11634 and *Oil and Natural Gas Corporation Ltd. v. Joint Venture* 2019 SCC OnLine Del 10456, he contends that the initially filed petition, being a mere skeletal filing, could not be treated as a valid filing in the eyes of law. It is his case that the first instance of valid filing in the present case, could only be considered as having been effected on 12.09.2019. He thus, contends that the delay of which condonation is sought is masked as a delay in re-filing, but in reality ought to be treated as a delay in filing the petition beyond the period of 3 months and 30 days as prescribed under the express provisions of Section 34(3) of the Act and cannot be condoned.

15. Mr. Abhinav Vashisth and Mr. Sudhir Nandrajog, learned senior counsel who appear for the respondents in the connected petitions oppose the applications as well and, besides adopting the arguments of Mr. Sethi,

submit that the reasons given in these applications as also the additional affidavit filed by the petitioner are extremely vague and cannot be treated as a sufficient ground to condone the delay. They further submit that the petitioner's alteration of the final page of the originally filed petition and act of filling in blanks in the statement of truth as also the *vakalatnama*, as originally filed, reveal their attempt to falsify the record which cannot be permitted, for which they relied on the decision of this Court in *Sravanthi Infratech Private Limited vs. Greens Power Equipment (China) Co. Ltd.*, 2016 SCC Online Del. 5645.

16. I have heard the learned ASG and learned senior counsel for the respondents and with their assistance, perused the record. The primary contention raised by the learned ASG, by relying on the decisions in *Pioneer Publicity Corporation Private Limited (supra)*, *M/s. Himachal Futuristic (supra)* and *M/s Associated Builders (supra)*, is that the parameters to be applied for condoning delay in re-filing are different from those applicable to delay in filing. There cannot be any quarrel with this proposition of law. However, in view of the respondent's plea that the original filing on 31.05.2019 was *non est* and the petition has to be treated as being validly filed only on 31.07.2019, i.e., the date on which the impugned award was placed on record and therefore, what the petitioner is actually seeking is not a condonation of delay in re-filing but condonation of delay in filing. To determine this issue, the foremost question which needs to be considered by this Court is whether the original filing was *non est* and a mere bunch of papers, or whether the same was filed in compliance with all legal requirements. If the Court finds that the initial petition was hopelessly inadequate or insufficient or contained defects which are fundamental to the very filing of the petition, then the filing has to be treated as *non est*, and the date of filing has to be

treated as the date on which the petitioner re-filed the petition after annexing all the necessary documents and removing objections raised by the Registry. On the other hand, if the initial filing is found to be valid, then the petition would have to be treated as having been filed within time and the question then would be whether the delay in re-filing, after curing of defects, ought to be condoned.

17. To determine whether the originally filed petition should be treated as valid or *non est*, this Court may be guided by the principles laid down by a Division Bench of this Court in ***DDA vs. Durga Construction Co., 2013 (139) DRJ 133(DB)*** wherein it was held as under:-

*“17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in **Ashok Kumar Parmar v. D.C. Sankhla: 1995 RLR 85**, whereby a Single Judge of this Court held as under:-*

“Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.”

A Division Bench of this Court upheld the aforesaid view in **D.C. Sankhla v. Ashok Kumar Parmar: 1995 (1) AD (Delhi) 753** and while dismissing the appeal preferred against decision of the Single Judge observed as under:-

“5. In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act.”

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.”

18. The aforestated principles, when applied to the facts of the present case, would provide an answer to the first question arising for my consideration – should the petition, as filed on 31.05.2019, be regarded as a ‘valid’ filing or as *non est*? It remains undisputed *inter alia* that the impugned award was not placed on record till 31.07.2019, by which date the extended period of limitation had already expired and that the petition, as originally filed, had been substantially altered at the time of re-filing. In fact at the time of re-filing, not only were documents spanning over 350 pages added to the petition, but even the framework of

the petition was changed, yet the last page of the re-filed petition continued to reflect the date of filing as 31.05.2019; which is patently untrue, in the light of the petitioner's admission that it had made changes in the body of the petition at the time of re-filing. This, in my considered opinion, is an entirely unacceptable practice. Even the fact that when the petition was initially filed no court fees was affixed, the *vakalatnama* was undated, the accompanying statement of truth was incomplete and lacked critical information, and the supporting affidavit made reference to documents which were not even annexed to the petition remains undisputed. However, the most glaring defect at the time of the initial filing as also the only re-filing done prior to 14.07.2019 was that even a copy of the award which the petitioner sought to assail, was not annexed with the petition. I am unable to comprehend as to how a petition seeking to assail an order, an award in this case, without even annexing a copy thereof can be claimed as a valid filing and that too without even moving an application seeking exemption from filing a copy of the impugned award.

19. It is obvious that the original petition, as filed on 31.05.2019, and only running into 83 pages was a careless and deliberate attempt on the petitioner's part to somehow stop the clock on limitation amounting to a clever manoeuvre to buy time. In fact even after the original petition was received back by the petitioner's counsel on 01.07.2019 with defects being pointed by the Registry, the petitioner did not take any steps to file a copy of the impugned award while re-filing the petition on 11.07.2019, i.e., within the extended period of limitation of 3 months and 30 days which expired on 14.07.2019. In fact, even as per the petitioner's admission, the impugned award was filed for the first time, belatedly, on 31.07.2019. I am of the view that the petitioner's failure to file the

impugned award along with the petition at the time of filing on 31.05.2019 or at the time of its re-filing on 11.07.2019, both falling within the period of limitation, cannot be underplayed as a 'trivial' defect but is a defect of such gravity that it would render the original filing as a mere dummy filing.

20. Though the learned ASG has vehemently urged that neither under the Original Side Rules nor the practice directions require the arbitral award to be filed along with the Section 34 petition and that in fact the award along with the entire arbitral record were required to be summoned by this Court as a matter of practice, I am unable to accept this contention. A bare perusal of the practice directions issued on 30.08.2010, which are relevant herein and reproduced below, do not support this contention. Further, on perusing the 2018 Original Sides Rules I find that Chapter XXVIII Rule 1, being the applicable provision, also merely states that the existing practice directions in relation to the proceedings under the Act shall stand incorporated by inclusion in these Rules. The same, however, do not, in any manner, either deal with or dispense with the requirement of annexing a copy of the impugned award in a Section 34 petition.

CHAPTER XXVIII
ALTERNATIVE DISPUTE RESOLUTION, ARBITRATION
AND MEDIATION

1. Extant rule (s), notification (s), scheme (s) and Practice Directions in relation to proceedings under the Arbitration and Conciliation Act, 1996, as amended from time to time, shall stand incorporated by inclusion in these Rules.

PRACTICE DIRECTION

Hon'ble the Chief Justice has been pleased to issue the following practice direction:-

As soon as notice is issued in the petitions filed under Section 34 of the Arbitration & Conciliation Act, 1996, the Registry shall send a letter of request to the Arbitrator to transmit the record of arbitral proceedings as well as award to this Court after the conclusion of arbitration.

This practice direction will come into force immediately.

*(Rakesh Kapoor)
Registrar General*

21. In fact, a similar plea regarding the effect of non-filing of the award has already been considered by a Division Bench in ***Executive Engineer vs. Shree Ram Construction Co.*** (2010) 120 DRJ 615 (DB) as also a co-ordinate Bench of this Court in ***SKS Power Generation (Chhattisgarh) Ltd. vs. ISC Projects Private Limited*** 2019 SCC OnLine Del 8006 holding that non-filing of the impugned award would be fatal. In my considered view, filing a copy of the impugned award would be a sine qua non in every petition laying a challenge thereon. On a combined consideration of the significant deficiencies in the original petition filed on 31.05.2019, especially the non-filing of a copy of the award, with the principles enunciated in ***Durga Construction*** (*supra*), I am compelled to hold that, notwithstanding the fact that it bore the requisite signatures, albeit not on every page, and was accompanied by the statement of truth, affidavit and the *vakalatnama*, the initial filing was *non est* in the eyes of law and is inconsequential. Therefore, in the present case I have no hesitation in holding that a valid petition can, at the earliest, be treated as having been filed on 31.07.2019, when for the first time a copy of the impugned award came to be annexed to the petition, even though the other objections which were equally important were removed only on 18.09.2019.

22. For the aforesaid reasons the petition, being re-filed after 14.07.2019, i.e., the date on which the extended period of limitation of 3

months and 30 days stood expired, has to be treated as being barred by limitation. Now these applications in question, though styled as applications seeking condonation of delay in re-filing, have to necessarily be treated as applications seeking condonation of delay in *filing* the petition beyond the statutorily prescribed period. As is settled, this Court does not have the power to condone any delay caused beyond 30 days after the expiry of the limitation period of three months, which in the present case expired on 14.07.2019. In this regard, reference may be made to the decision in *Union of India vs. Popular Construction Co. (2001) 8 SCC 470* wherein the Supreme Court held that the Court cannot entertain an application to set aside the award beyond the extended period under proviso to Section 34 (3) of the Act, thus clearly laying down that a challenge to an award filed after 3 months and 30 days of receipt of the arbitral award by the aggrieved party has to be rejected.

23. Thus, I have no hesitation in holding that these applications are seeking condonation of delay in filing, which is not permissible considering the delay in question was beyond the extended period of limitation and cannot, therefore, be condoned by this Court.

24. In the light of my aforesaid conclusion, while there is no doubt that the applications have to be treated as seeking condonation of delay in filing but even if the petitioner's plea were accepted that the delay ought to be treated as a 'delay in re-filing', it was still incumbent upon the petitioner to provide cogent and substantive reasons for the delay of 50/55 days occasioned in filing these petitions. Undoubtedly as a matter of general practice, the standards applicable while considering a prayer for condonation of delay in 're-filing' are less rigid than those applicable for condoning delay in filing, but I cannot lose sight of the fact that these applications pertain to petitions under Section 34 of the Act where the

approach, even while dealing with a prayer for condonation of delay in re-filing, cannot be too liberal.

25. In this regard, reference may be made to the decision in *Durga Construction (supra)*, wherein a Division Bench of this Court, while dealing with an application for condonation of delay in re-filing of a petition beyond the time prescribed under Section 34(3) of the Act, held that though the Court is empowered to condone delay beyond the extended period of limitation of 3 months and 30 days, it is requisite for the party seeking the condonation to show that despite his diligence, the rectification of defects and re-filing could not be carried out within the limitation period, for bonafide reasons beyond his control. At the time of considering applications of like nature, it is important for the Court to bear in mind the legislative intent for prescribing a statutory period of limitation under Section 34(3) of the Act viz. ensuring expeditious disposal of arbitration and preventing delay in implementation of an award by parties who would malafidely challenge the same. Ultimately, the Act sought to breathe life into a much needed alternate system of dispute resolution and lend greater credence to it, by removing any unwarranted obstacles to its smooth functioning. A liberal approach while dealing with an application for condonation of delay in challenging the award would only endanger and frustrate the purpose for which the Act was enacted.

26. Returning to the facts of the present petition, I find that regrettably, the petitioner has failed to provide any justifiable reason, much less a sufficient reason to seek condonation of delay. The petitioner's explanation in the application as also the additional affidavit is wholly perfunctory, vague and demonstrate the alarmingly lackadaisical approach of the petitioner in complying with general filing practice and

the statutory requirements under Section 34 of the Act. In fact the petitioner has merely made a bald averment that the delay had been caused due to repeated objections being raised on the petition by the Registry, which took time to cure. On the contrary the logbook maintained by the Registry shows that most of the defects raised by the Registry at the very first instance of filing on 04.06.2019 were not rectified till as late as 18.09.2019, which indicates that the petitioner was at fault for not removing the objections in a timely manner and the reasons sought to be advanced by it are not at all bonafide. Thus, even if the delay in question were to be treated as a 'delay in re-filing', the petitioner's explanation for the delay being vague, unsubstantiated, insufficient and contrary to the record is liable to be rejected.

27. For the aforesaid reasons, when looked at from any angle, these applications cannot succeed and are accordingly dismissed.

O.M.P. (COMM) 399/2019 & IA No.13333/2019 (stay)

O.M.P. (COMM) 407/2019 & IA Nos.13543/2019 (stay)

O.M.P. (COMM) 408/2019 & IA Nos.13546/2019 (stay)

28. Since the applications seeking condonation of delay in filing/re-filing the petitions have been dismissed, the petitions are also dismissed.

March 18, 2020
'SDP/gm'

(REKHA PALLI)
JUDGE