

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2769 OF 2014

The State of Maharashtra	..	Petitioner
VS.		
Dayabhai & Co. Pvt. Ltd. & Ors.	..	Respondents

Mr. A. B. Vagyani – GP with Ms Vaishali Nimbalkar – AGP for Petitioner.

Mr. Birendra Saraf with Mr. Rohan Sawant i/b. Mr. Rajesh Parab for Respondent No. 1

Mr. Amol Mhatre for Respondent No. 2.

Mr. S. G. Karandikar for Respondent Nos. 4 to 6.

Mr. Mayur Khandeparkar with Mr. Tushar Gujjar i/b. Solicis Lex for Respondent Nos. 13 and 14.

CORAM : M. S. SONAK, J.
DATE: 03 MARCH 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable

2] This petition is directed against the judgment and order dated 30 January 2013 made by the Maharashtra Revenue Tribunal ("MRT") declining to entertain the petitioner's application for condonation of delay in filing revision petition, on the ground that it has no power to entertain such an application.

3] The MRT, in taking the aforesaid decision, had placed reliance upon the decision of this Court in the case of *The State of Maharashtra & Anr. vs. Shri Ramniklal Amrutlal Parekh & Anr.*¹

4] The State, in fact, carried the matter in appeal to the Hon'ble Apex Court by way of civil appeal no. 10801 of 2013 and the Hon'ble Apex Court by order dated 29 November 2013 has set aside the judgment and order made by this Court in the aforesaid case of *Ramniklal Parekh* (supra). The relevant observations from the order of the Hon'ble Apex Court, read thus :

“ We have considered the respective arguments and carefully perused the record.

It is not in dispute that notice dated 4.2.1998 issued by the Deputy Collector was served upon the Forest Range Officer. It is also not in dispute that the Forest Range Officer had participated in the proceedings and presented the cause of the department. Therefore, the Deputy Collector was duty bound to serve a copy of the final order upon the Forest Range Officer. However, the fact of the matter is that the order was served only upon the Deputy Conservator who was senior to the Forest Range Officer in the hierarchy of administration. The latter's offices took sufficiently long time for communicating the order to the Forest Range Officer.

Therefore, the concerned officer cannot be faulted for delaying filing of the appeal.

¹ Writ Petition No. 1321 of 2010 decided on 21.10.2011

An issue substantially similar to one raised in this appeal was considered by a three Judge Bench in Union of India and Tecco Trichy Engineers & Contractors (supra). [(2005) 4 SCC 239] While reversing the award of the Arbitral Tribunal, this Court observed:

7. *It is well-known that the Ministry of Railways has a very large area of operation covering several divisions, having different divisional heads and various departments within the division, having their own departmental heads. The General Manager of the Railways is at the very apex of the division with the responsibility of taking strategic decisions, laying down policies of the organisation, giving administrative instructions and issuing guidelines in the organisation. He is from elite managerial cadre which runs entire organisation of his division with different departments, having different departmental heads. The day-to-day management and operations of (pic) different departments rests with different departmental heads. The departmental head is directly connected and concerned with the departmental functioning and is alone expected to know the progress of the matter pending before the Arbitral Tribunal concerning his department. He is the person who knows exactly where the shoe pinches, whether the arbitral award is adverse to the department's interest. The departmental head would naturally be in a position to know whether the arbitrator has committed a mistake in understanding the departmental's line of*

submissions and the grounds available to challenge the award. He is aware of the factual aspect of the case and also the factual and legal aspects of the questions involved in the arbitration proceedings. It is also a known fact and the Court can take judicial notice of it that there are several arbitration proceedings pending consideration concerning affairs of the Railways before arbitration. The General Manager, with executive workload of entire division cannot be expected to know all the niceties of the case pending before the Arbitral Tribunal or for that matter the arbitral award itself and to take a decision as to whether the arbitral award deserves challenge, without proper assistance of the departmental head. The General Manager, being the head of the division, at best is only expected to take final decision whether the arbitral award is to be challenged or not on the basis of the advice and the material placed before him by the person concerned with arbitration proceedings. Taking a final decision would be possible only if the subject-matter of challenge, namely, the arbitral award is known to the departmental head, who is directly concerned with the subject matter as well as arbitral proceedings. In the large organizations like the Railways, "party" as referred to in Section 2(h) read with Section 34(3) of the Act has to be construed to be a person directly connected with and involved in the proceedings and who is in control of the proceedings before the arbitrator.

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. *In the context of a huge organization like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to*

understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34.”

Following the ratio of the above-noted judgment, we hold that the Tribunal and the High Court committed an error by refusing to order as also the one passed by the Tribunal are set aside and the matter is remitted to the Tribunal for deciding the appeal of the appellants on merits.”

5] In view of the same, it is only appropriate that the impugned order dated 30 January 2013 is set aside. The petitioner's application seeking condonation of delay shall have to be considered by the MRT in accordance with law. The MRT to hear and decide the same within a period of eight weeks from today.

6] It is made clear that all contentions of all parties are left open for decision by the MRT.

7] Parties to appear before the MRT on 19 March 2015 at 11.00 a.m. in order to obtain directions.

8] The Respondent nos. 13 and 14 are granted liberty to seek intervention in the proceedings before the MRT. Such application shall be decided in accordance with law and on its own merits.

9] All parties to act on the basis of an authenticated copy of this order.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka