

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 139 OF 2009
IN
REVIEW PETITION (STAMP) NO. 4642 OF 2009
IN
ARBITRATION PETITION NO.26 OF 2007
WITH
REVIEW PETITION (STAMP) NO. 4642 OF 2009**

M/s. Ashoka Buildcon Ltd. .. Applicant
Vs.
Maharashtra State Road
Development Corporation Ltd. .. Respondent

Mr. R.S. Apte, Senior Advocate a/w Mr. A.A. Garge for the Applicant.
Mr. Arun Siwach a/w Mr. Vikash Jha i/b M/s. Cyril Amarchand Mangaldas
for the Respondent-MSRDC.

**CORAM : A.A. SAYED, J.
DATED : 17 JULY 2015**

P.C.

1 This Civil Application has been filed for seeking condonation of delay of 227 days in filing the Review Petition (Stamp) No.4642 of 2009. The reasons for the delay have been stated in paragraph 6 of the application in the following terms :-

“6. The petitioner submits that the impugned Judgment and Order was passed on 2/05/2008. Application for the Certified Copy was made on 17/09/2008 and the same was ready on 18/10/2008 and received on 20/10/2008. The Petitioner states and submits that the petitioner had also sought from the Respondent corporation vide its letter dtd. 22/05/2008 the “Minutes of Meeting” of the Committee wherein the Vice Chairman and the Managing Director had

sanctioned the amount of Rs.76 Lakhs in the contract for collection of toll at Daund Road Over Bridge. The Petitioner submits that the Respondent Corporation however failed to reply the said letter which has caused delay in preferring the Review Petition. Moreover, the petitioner being a company was required to get sanctions from its various departments after seeking legal advice from various lawyers. The petitioner submits that there is some delay in preferring the present Review Application. The said delay caused is unintentional and inadvertent in nature. The Petitioners submit that the Apex Court has held that matters should not be thrown out of court on technical grounds like in the present case. The Petitioners submit that the Apex Court has also held that the matters should be dealt with and decided on merits. The Petitioners submit that in these circumstances it is necessary that the above review petition may be allowed and the Arbitration Petition No.26 of 2007 may be heard and decided on merits. Hereto annexed and marked Exh.'A' is the copy of the letter dtd.22/05/2008 issued by the Petitioner to the Respondent Corporation.

2 In my view, the Applicant/Review Petitioner has not made out any case for condoning the delay of 227 days. The application for certified copy itself was made after 3-1/2 months. There is no explanation given for the same. The explanation given by the Applicant even otherwise is not at all convincing or satisfactory. The reasons mentioned in paragraph 6 of the Application would not constitute sufficient cause to condone the delay. It is also noticed that the Review Petition and the Civil Application are filed sometime in 2009 and it is not understood why the Civil Application and Review Petition had been kept pending on the file of this Court. No

attempt has been made by the Applicant/Review Petitioner to move the Court earlier when the Hon'ble the then Chief Justice who had passed the impugned judgment and order was in office.

3 Even otherwise no error apparent is found on the face of the record in the impugned judgment and order of 19 pages declining to appoint an Arbitrator under the Arbitration and Conciliation Act, 1996. Moreover, in view of the observations in paragraph 43 of the Judgment of 7-Judges Bench of the Hon'ble Supreme Court in the case of **M/s. S.B.P. & Co. vs. M/s. Patel Engineering (AIR 2006 SC 450)** it is doubtful whether Review Petition would be maintainable.

4 In the circumstances, Civil Application is dismissed. Consequently, the Review Petition shall stand disposed of.

(A.A. SAYED, J.)