

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

**CIVIL APPLICATION NO. 20 OF 2015
IN
ARBITRATION APPEAL (STAMP) NO. 14214 OF 2015**

The State of Maharashtra
Represented through
Executive Engineer, P.W.D.

.. Applicant

Vs.

M/s. Ashoka Bridgeways

.. Respondent

Mr. Ranjeet H. Patil & Mr. Kuldeep S. Patil, Special Counsel for Applicant/
State.

Mr. R.S. Apte, Sr. Counsel a/w Mr. A.A. Garge for the Respondent.

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

P.C.

1 This is an Application by the Applicant/State of Maharashtra for condoning of delay of 191 days in filing the Arbitration Appeal against Judgment and Order dated 30 June 2014 passed by the District Judge-1, Pandharpur, District Solapur, in Civil Misc. Application No.29 of 2014. The Applicant/Appellant has enlisted the relevant dates in paragraph 3 of the Civil Application which reads as follows :-

“3) In brief the facts giving rise to the present case are summerised in capsilauted form as under :-

- i) The applicant is a partnership firm and registered under the Indian partnership act, 1932 with an object to inter alia do construction business.
- ii) The respondent No.2 is the State of Maharashtra whereby Public Work Department is one of the Department of the opponent.
- iii) The Government of Maharashtra through the Executive Engineer PWD / Pandharpur entered into contract with Applicant on / for Improvement to S.H. 76 to Takali Kasegaon Anwali Road MDR..71 km.n. 00/00 to 11/00.
- iv) As per the terms and condition in the contract the applicant was to construct the project roadway including road structure, minor bridges and approaches on Built Operate and transfer (BOT) basis with their own finances under the supervision of the opponent.
- v) The applicants were entitled to recover the cost of construction by way of collection of toll from the vehicles using the project facility, till the end of the concession period.
- vi) The concession period was quoted by the applicant after reading the site conditions with reference to the scope and details as given by the opponent and relying on the inputs given by the opponent in the tender amount.
- vii) After entering into the contract the applicant executed the work under provisions of contract. During the execution of work opponent ordered certain extra works described as variation under provisions of contract. During the operation period the applicant also suffered losses on account of flood.
- viii) After the completion of work the notification to collect toll under Bombay Motor Vehicle Tax Act, 1958 u/s 20 was issued by Government of Maharashtra on 16/3/2004. The applicant is therefore collecting toll accordingly at the location mentioned in the notification.

2 The Department has rightly calculated the delay as 191 days though according to the Reply filed by the Respondent there is a delay of 316 days from 01.07.2014 to 12.05.2015. The calculation given by the Respondent is incorrect in as much as it does not take into account the period which is required to be excluded after submission of Application of certified copy of the impugned order.

3 Learned Senior Counsel for the Respondent submitted that delay has not been sufficiently explained and the Applicant was not pursuing the matter diligently and the Applicant is not entitled for any relief. It is submitted that no sufficient cause has been made out to condone the delay. The Government cannot be treated differently than the private litigant and the delay ought not to be condoned.

4 Having regard to the facts and circumstances of the case, I am inclined to condone the delay subject to costs. I find there has been reasonable diligence on part of the Applicant and the matter ought not to be thrown out at this stage on technicalities as opposed to a decision on merits. I find that the delay is not such that ought not to be condoned. It cannot be said that the delay was for want of bonafides or inaction on the part of the Applicant. In the **State of Haryana vs. Chandra Mani, 1996**

SCC(3) 132 a Bench of 3 learned Judges of the Supreme Court has held “the expression 'sufficient cause' should be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit.”

5 In the circumstances and in the interest of justice I pass the following order :-

Order

- (i) The Civil Application is allowed in terms of prayer clause (b) subject to cost Rs.10,000/- to be paid by the Applicant State of Maharashtra to the Respondent within 3 weeks from today.
- (ii) The Appeal and other Civil Application are adjourned for 3 weeks.

(A.A. SAYED, J.)