

Anand

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

**CIVIL APPLICATION NO.24 OF 2015
IN
ARBITRATION APPEAL(ST) NO.16590 OF 2015**

The State of Maharashtra through .Applicant
The Executive Engineer, Raigad

v/s.

M/s. Patwardhan Infrastructure Pvt. Ltd. .Respondent

Mr.Kuldeep S. Patil a/w. Mr.Ranjeet H. Patil, Advocate, for the Applicant
Mr.Atul Rajadhyaksha, Senior Counsel i/b. Mrs.Urmila Kamat, for the Respondent

CORAM : A.A.SAYED, J.

DATE : 31.07.2015

P.C.

. This Civil Application has been filed by the Applicant – State of Maharashtra seeking condonation of delay of 116 days in filing the Arbitration Appeal. The Applicant has enlisted the relevant dates and events in para 3 of the Civil Application which read as follows :

SR.No.	DATE	PARTICULARS
1	24/09/14	The Judgment and Order passed by the Learned District Judge-2, Raigad-Alibaug in Arbitration Petition No.1 of 2012.
2	25/09/14	Applied for the certified copy of the impugned Judgment and Order.
3	25/11/14	Certified copy of the impugned Judgment and Order was ready for delivery.
4	07/10/14	Office of the Executive Engineer, Public Works Department, Alibaug, forwarded

		the legal opinion to the Law & Judiciary Department, Mantralaya, Mumbai for filing above mentioned Arbitration Appeal in this Hon'ble High Court.
5	23/02/15	The last date of filing the above mentioned Arbitration Appeal.
6	03/03/15	The Inc. Superintendent (Legal), Law & Judiciary Department, Mantralaya, Mumbai issued Resolution No.43/M. Branch for filing the above mentioned Arbitration Appeal in this Hon'ble High Court.
7	10/06/15	Office of the Government Pleader, High Court (A.S.), Mumbai, received copy of Resolution along with other papers for filing the above mentioned Arbitration Appeal in this Hon'ble High Court.
8	11/06/15	Office of the Government Pleader, High Court(A.S.), Mumbai, called upon the (1) Executive Engineer, Alibaug Public Works Division, Alibaug-Raigad (2) Deputy Executive Engineer, Pen Public Works Division, Alibaug-Raigad, to forward the certified copies of the Judgment and Order of Lower Court and all other relevant documents.
9	11/06/15	Office of the Government Pleader, High Court(A.S.), Mumbai, called upon the (1) Executive Engineer, Alibaug Public Works Division, Alibaug-Raigad (2) Deputy Executive Engineer, Pen Public Works Division, Alibaug-Raigad, to explain reasons of delay for filing the above mentioned Arbitration Appeal in this Hon'ble High Court.
10	11/06/15	Office of the Government Pleader, High Court (A.S.), Mumbai called upon the (1) Executive Engineer, Alibaug Public Works Division, Alibaug-Raigad (2) Deputy Executive Engineer, Pen Public Works Division, Alibaug-Raigad, to remit requisition amount for payment of Court fees and other expenses.

11	11/06/15	The papers were handed over to the concerned A.G.P. for drafting Arbitration Appeal and Civil Application for stay.
12	12/06/15	The concerned A.G.P. drafted the Arbitration Appeal and Civil Application for stay.
13	-----	The present Arbitration Appeal filed in this Hon'ble High Court.

2. In para 4 of the Civil Application, the Applicant has stated as under :

“4. The Applicant states that there is a delay of _____ days in filing Arbitration Appeal. The Applicant further states that impugned Judgment and Order dated 24.09.2014 passed by Learned District Judge-2, Alibaug-Raigad. The Applicant further states that they applied for the certified copy of the Judgment and Order dated 25.09.2014. The certified copy of Judgment and Order was ready for delivery on 25.11.2014. The Applicant thereafter, sought for legal opinion for filing appeal by forwarding a letter dated 07.10.2014 to the Superintending Engineer, Konkan Bhavan, Belapur, Navi Mumbai. Thereafter, Superintending Engineer, Konkan Bhavan, Belapur, Navi Mumbai forwarded the said proposal to the Chief Engineer, Public Works Department, Madam Kama Road, Mumbai. Thereafter, the Chief Engineer, Public Works Department, Madam Kama Road, Mumbai forwarded the said proposal/opinion to the Secretary, Public Works Department, Mantralaya, Mumbai. The said proposal/papers sent to the Law & Judiciary

Department, Mantralaya, Mumbai for permission/sanction to file appeal. Thereafter, the Law & Judiciary Department, Mantralaya, Mumbai issued Resolution dated 03.03.2015 for granting permission to file Arbitration Appeal. The Applicant further says that the said resolution along with other relevant documents were received in the office of the Government Pleader, High Court(A.S.), Mumbai on 10.06.2015 after expiry of limitation period. Thereafter, the work of drafting was entrusted to one of the Law Officers, who in turn, after due scrutiny drafted the Memo of Appeal. In the process stated here in above, the delay has been caused in filing the said Arbitration Appeal in this Hon'ble High Court.”

3. Learned counsel for the Applicant/Appellant – State of Maharashtra has drawn my attention to the aforementioned dates and events and submitted that the Applicant has made out sufficient cause to condone the delay and the Civil Application be, therefore, allowed. Learned counsel for the Applicant relied upon an order dated 17.07.2015 in C.A.No.20 of 2015 in Arbitration Appeal (St) No.14214 of 2015 of this Court, wherein the Applicant was also the State of Maharashtra and this Court had condoned the delay of 191 days by imposing costs of Rs.10,000/-.

4. Learned Senior counsel appearing for the Respondent, on the other hand, submitted that the Applicant has suppressed the

fact that the Respondent had forwarded a certified copy of the impugned Judgment to the Applicant on 14.10.2014. He submitted that as a matter of fact, the Respondent had applied for certified copy of the impugned Judgment dated 24.09.2014 on 30.09.2014 and even though the 'date of completion' was indicated as 14.10.2014 on the Respondent's application for certified copy, the certified copy was ready seven days earlier than 'the date of completion'. He has pointed out that so far as the Applicant's application for certified copy dated 25.09.2014 is concerned, though the 'date for completion' was shown as 10.10.2014, the Applicant had not pursued the matter with the department and the certified copy was ultimately ready only on 25.11.2014. Learned Senior counsel further submitted that admittedly the last date of filing Arbitration Appeal was 23.02.2015 and that from 03.03.2015 to 10.06.2015, which is a period of 97 days, there is no explanation offered by the Applicant as to why the matter remained with the Law and Judiciary Department, Mantralaya and the Resolution which was issued on 03.03.2015 by the Judiciary Department for filing the Appeal was sent to the office of the Government Pleader only on 10.06.2015. Learned Senior counsel has placed reliance on the judgments of the Supreme Court in ***Postmaster General And Others vs. Living Media India Limited And Another, (2012)3 Supreme Court Cases 563*** and ***State of Uttar Pradesh Through***

Executive Engineer And Another vs. Amar Nath Yadav, (2014)2

Supreme Court Cases 422. The learned Senior counsel submitted that merely because the Applicant is the State Government, it cannot be treated differently and law of limitation would bind everybody including the Government. He submitted that no sufficient cause has been made out by the Applicant to condone the delay and the matter was not pursued diligently and the Applicant is not entitled to any relief.

5. I have heard learned Counsel for the parties. Having regard to the facts and circumstances of the case, I am inclined to condone the delay subject to costs. In the judgments cited by the learned Senior Counsel, there was a delay of more than 427 and 481 days respectively. The reported judgments are clearly distinguishable on facts. In the present case, there is a delay of 116 days and it cannot be said that the delay was such that ought not to be condoned. I find that there has been reasonable diligence on the part of the Applicant and the facts are not such that the Appeal deserves to be thrown out as opposed to a decision of merits. It cannot be said that the delay is on account of complete negligence or deliberate inaction on the part of the Applicant. A liberal approach, in the facts of the present case, needs to be adopted to advance substantial justice.

6. In the circumstances and in the interest of justice, the following order is being passed :

(i) The Civil Application is allowed in terms of prayer clause (b) subject to costs of Rs.10,000/- to be paid by the Applicant to the Respondent within four weeks from today.

7. List the Appeal on 28.08.2015.

(A.A.SAYED, J.)