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ARA(ST)-21047-2015
(sr. no.3)
Thurs,29Oct,2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL (ST) NO. 21047 OF 2015
IN
CIVIL MISC. APPLICATION NO. 2 OF 2009

ALONGWITH
CIVIL APPLICATION NO. 36 OF 2015
(FOR STAY)
IN
ARBITRATION APPEAL (ST) NO. 21047 OF 2015
IN
CIVIL MISC. APPLICATION NO. 2 OF 2009

The State of Maharashtra
Through The Superintending Engineer
Shri. Ramesh Maruti Chaudhari
Dy. Engineer, P.W.D. Sub Division (S)
Paltan

.....Applicant
(Orig. Respondent)

: V/S :

1. M/s. KETI Constructions Ltd. & Ors.

.....Respondents
(Orig. Claimant)

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Mr. Dinesh Khaire, Special Council with Mr. A.R. Patil, AGP for the applicant.

Mr. Nandu Pawar, Advocate for respondent no.1.

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Coram :- Smt. R.P. SondurBaldota, J.

29th October, 2015.

P.C. :-

1). By the order passed separately, the delay in filing the appeal is condoned and by the consent of parties, the appeal is taken on board forthwith for hearing. Heard the learned Advocates.

2). The appeal is directed against the order dated 10th March, 2015 by which the District Judge, Satara rejected the application moved by the appellant for condonation of delay of one day in filing the application under Section 34 of the Arbitration and Conciliation Act, 1996 “the Arbitration Act” for short) for setting aside the arbitral award. Admittedly, copy of the Award was received by the appellant on the same day as the Award i.e. 20th December, 2008. The appellant filed application under Section 34 of the Arbitration Act on 20th April, 2009. The District Court, noted that the period of limitation prescribed by Section 34(3) of the Arbitration Act was of 3 months from the date of receipt of the Award with further grace period of 30 days. If the Court is satisfied that the applicant was prevented by sufficient cause from making an application within a period of 3 months, it may entertain the application within the grace period of 30 days but not thereafter. Since the application was moved beyond grace period of 30 days, the District Court by relying upon the decision of the Apex Court in **Union of India V/s Popular Construction Company reported in (2001) 8 SCC page**

470 held that the further grace period of 30 days provided under Section 34 (3) of the Arbitration Act is not the prescribed period of limitation contemplated by Section 4 of the Limitation Act and therefore Section 4 of the Limitation Act is not attracted to the case. There is a period of limitation provided for even for considering the application for condonation of delay.

3). The District Court has correctly appreciated the facts of the case and correctly applied the provisions of Section 34(3) of the Arbitration Act to it to reject the application. Mr. Khaire, Special Council appearing for the State, however, relying upon the decision of the Apex Court in the case of **Union of India V/s. Tecco Trichy Engineers & Contractors reported in (2005) 4 Supreme Court Cases page 239** submits that in the decision cited, the Apex Court has acknowledged the peculiar position of the Government Departments and Government Organisations for the purpose of giving concession to them by considering their application for condonation of delay in a liberal way.

He refers to para-11 which reads as under :-

“11. We cannot be oblivious of the fact of impersonal approach in the government departments and organisations like Railways. In the very nature of the working of government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have taken place unless the Chief Engineer had received the copy of the award when only the

delivery of the award within the meaning of sub-section (5) of Section 31 shall be deemed to have taken place.”

4). The observations can be useful to the appellant, only in the circumstances, where discretion is available to the Court while deciding the application for condonation of delay. In view of the specific provision of Section 34(3), there is no discretion left with the Court to consider the application for condonation of delay beyond the grace period of 30 days. Hence, the appeal is dismissed.

5). In view of dismissal of the appeal, Civil Application No. 36 of 2015 taken out for stay does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)