

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

CIVIL APPLICATION (R) NO. 4 OF 2015

WITH

ARBITRATION APPEAL NO. 30 OF 2014

WITH

CIVIL APPLICATION (R) NO. 36 OF 2014

Maharashtra Water Supply and Sewerage Board
Through its Executive Engineer ... Applicant

vs.

M/s. V. P. Shah ... Respondent

Ms. Neeta Karnik, Advocate for the applicant.

Mr. Prabhakar Jadhav, Advocate for the respondent.

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

Date : 9th October, 2015

P.C. :

1. The applicant is Maharashtra Water Supply and Sewerage Board through its Executive Engineer. It has filed this application for condonation of delay of one year and 335 days in preferring appeal against the orders passed by the Civil Judge, Senior Division, Thane in the proceedings under Section 17 and the application under Section 33 r/w Section 30 of the Arbitration Act, 1940. The application is opposed by the respondent.

2. Misc. Application No. 99 of 1989 was filed by the respondent for decree in terms of the arbitral award dated 13th April, 1989 made under the Arbitration Act, 1940. The applicant filed Exh.8 therein under Section 33 r/w Section 30 of the Arbitration Act, 1940 for setting aside the award. The Trial Court by its detailed order dated 4th September, 2012, dismissed the

application at Exh.8 and by a separate order of the same date passed decree in terms of the arbitral award in favour of the respondent.

3. The explanation for the inordinate delay stated in the civil application and the affidavit-in-rejoinder is as follows. The order on Exh.1 passed on 4th September, 2012 carried incorrect date of 4th September, 2011. The certified copy thereof was received on 12th August, 2013. But the error in the date was realised by the applicant only when the same was pointed by the advocate who was consulted for filing the appeal. Then, the applicant filed Misc. Application No. 7 of 2014 for correction of the date which was decided on 27th June, 2014. Thereupon, the applicant again applied for certified copy on 11th July, 2014 and received it on 18th July, 2014. The present appeal along with the application for condonation of delay was filed on 3rd November, 2014. Thus, the first set of reasons stated are delay in receiving certified copy, error in the date of the order to be impugned, the time taken in deciding the application for correction of the error and further time for certified copy.

4. The second set of reasons for delay stated in the application as well as the affidavit-in-rejoinder are that the deponent of the affidavit was given authority for filing the present proceedings on 29th October, 2014. In the meantime, Vidhan

Sabha Election for the State of Maharashtra took place. The deponent was appointed as Flying Squad Officer on election duty for Thane region. He became busy with the election duty, which added to the delay in filing the appeal.

5. The third set of reasons is stated at para 4 of the affidavit-in-rejoinder, which reads as follows :

“I say that Dahisar Goteghar and 14 villages Regional Rural Water Supply Scheme, Taluka & District :- Thane and Aug. Wangani Water Supply Scheme, Taluka :- Ambernath & District :- Thane, were being executed on emergency basis under my Supervision. As also other 5 Schemes were to be performed and in addition to this work I was given responsibility of urgent maintenance and repair work of MJP office and residential building situated at Thane, Mumbai and Navi Mumbai. I say that work protocol of department of W.S.S.D., Mantralaya too had to be done.”

6. The applicant, though a Statutory Board, is expected to be aware, like any other litigant, of legal provisions for period of limitation in filing appeals. Eight days after passing of the orders it applied for certified copies thereof. Then, it waited for almost one year to receive the same. It is not the complaint of the applicant that the concerned Court was delaying issuance of the certified copies. Further, the applicant does not disclose the date on which the certified copy was ready for receiving, which date alone would

be relevant for considering the excuse for delay. Next the applicant does not disclose the date on which it consulted the advocate for filing appeal and the date on which advice for getting the date of the order corrected was given. The absence of these material particulars of the claim made renders the same unacceptable. Besides, it is obvious that the error in the date was only a typographical error and it could not have prevented the applicant from filing the appeal. Thus the first set of reasons are without merit.

7. As regards the second set of reasons, admittedly the elections had taken place on 22nd October, 2014 and the authority given to the deponent is dated 29th October, 2014. Hence, this excuse given is patently untrue, to say the least.

8. The third set of reasons consists of the official duties of the deponent. He is working as an Executive Engineer. If at the relevant time he felt that he was overloaded with the office-work, he could have requested for the alternate arrangements. Therefore, there is no substance in the third set also.

9. For the above reasons the application is dismissed. Consequently, Arbitration Appeal No.30 of 2014 and Civil Application No.36 of 2014 do not survive. The same stand disposed off accordingly.

[Smt. R. P. SondurBaldota, J.]