

IN THE HIGH COURT OF BOMBAY AT GOA.

**MISC. CIVIL APPLICATION NO. 424/2016
IN
STAMP NUMBER MAIN NO.3701 OF 2015**

Titagarh Wagons Limited

Applicants

Versus

Chowgule and Company Private Limited

Respondents

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Shri Sudin M.Usgaonkar, Senior Advocate with Shri Rajesh K.Choudhary, Advocate for the applicants.

Shri S.D.Lotlikar, Senior Advocate with Shri P. Lotlikar, Advocate for the respondents.

**CORAM : NUTAN D.SARDESSAI, J.
RESERVED ON :04/07/2016.
PRONOUNCED ON :28/07/2016**

ORAL ORDER:

1] Shri S.M.Usgaonkar, learned Senior Counsel with Shri R.K.Choudhary, learned Counsel for the applicants and Shri S.D.Lotlikar, learned Senior Counsel with Shri P. Lotlikar, learned Counsel for the respondents came to be heard on the application for the condonation of delay under Section 5 of the Limitation Act.

2] It was the contention of Shri S.M. Usgaonkar, learned Senior Counsel that the applicants were a Company which was having its registered office at Kolkata without any local office. The learned District Judge had passed the Award under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act" for

short) and which was sought to be assailed by way of an appeal before this Court by recourse to Section 37 of the Act. The decision was taken by the applicants to prefer an appeal and in that context they tried to seek the services of their erstwhile Counsel but due to their inability, the applicants were able to locate the Counsel having operations in Mumbai, who was instructed to draft the appeal. However, due to their logistics and resources in Mumbai, the applicants could not assist the Counsel who failed to draft an appeal and, therefore, in the last week of August 2015, the applicants decided to get the appeal drafted and filed through its regular Counsel situated in Delhi.

3] The appeal was accordingly drafted and the first draft was made available to them in the second week of September 2015. After seeking the modifications, the same was resent to the Counsel in Delhi for re-verification in the last week of September 2015. The draft of the appeal was re-worked and the changes as suggested by the applicants were deliberated and incorporated therein. The revised draft was sent to the applicants in the second week of October 2015 for approval but due to the Durga Puja Vacations in Kolkata, it could not be finalised and could only be finalised in the first week of November 2015. Even then they could not finalise the same with their Counsel in Delhi due to the Diwali Vacations which was ultimately finalised in the

third week of November 2015. The Counsel in Delhi tried to get the Counsel in Goa but could not do so and thereafter the Counsel located in Mumbai ensured that he would take up the file to Goa. In the whole process, there was a delay of 87 days in filing the appeal and hence, the application for the condonation of delay which was not intentional and due to the aforesaid reasons and circumstances beyond their control.

4] Shri S.M. Usgaonkar, learned Senior Counsel for the applicants submitted that the applicants had shown good and sufficient cause for the delay in filing the appeal and relied in **(N.Balakrishnan Vs. M. Krishnamurthy) [(1998) 7 SCC 123]** and **the Collector Land Acquisition, Anant Nag Vs. Mst. Katiji and Ors. [AIR 1987 SC 1353]** and concluded his arguments that a meritorious case should not be defeated on technicalities. Shri S.D.Lotlikar, learned Senior Counsel for the respondents contended that the proceedings were a little different being under the provisions of the Act which contemplated that even the application under Section 34 of the Act had to be filed within a specified time and the time extended under the Act and any application thereafter was not tenable. The present application filed alongwith the appeal under Section 37 of the Act had to be construed along the similar lines and the limitation had to be strictly construed. There were no specific details given on

behalf of the applicants to account for the delay nor any sufficient cause shown. There were no details in the application and quite on the contrary the facts were sketchy.

5] The applicants were a Company incorporated under the Companies Act, 1956 which could act only through its Resolution and there was nothing to indicate that any Resolutions were adopted to explain the delay. The entire arbitral proceedings took place in Goa where the applicants were duly represented by their Counsel. The application was filed as an afterthought only after the receipt of the notice of winding up of the proceedings issued by the respondents. The applicants had to support their application with an affidavit reiterating its contents and in the absence thereof, the application had to be dismissed.

6] The applicants were saddled with the Award of the learned Principal District Judge, North Goa Panaji under Section 34 of the Act whereby their application under Section 34 of the Act came to be dismissed and they were bound to honour the Award passed by the Arbitrator fastening the liability on them in a substantial amount. The applicants, therefore, having suffered such an order, would not stand to benefit by not assailing the award passed by the learned Principal District Judge without challenging it in an appeal being the remedy available to them

under Section 37 of the Act. No doubt, the application as made reflects at the first flush that the grounds urged for setting out the delay are sketchy and not well founded. However, the contention on behalf of the respondents that the said grounds were only to fill up the lacunae cannot be countenanced for the mere asking particularly when the applicant would not forfeit the remedy of an appeal available to it under the Act to assail the impugned award of the learned Principal District Judge.

7] In N. Balakrishnan (supra), the Hon'ble Apex Court set out the guidelines in the matter of exercise of the discretion to condone the delay and held that the words, "sufficient cause" should be construed liberally. The acceptability of an explanation for the delay is the sole criterion and the length of delay is not relevant. In the absence of anything showing malafide or deliberate delay as a dilatory tactic, the Court should normally condone the delay. However, while doing so, the Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly. Where a Court condones delay in the positive exercise of discretion, the superior Court and more particularly the Revisional Court should not normally disturb the same. But where the request for the condonation of delay, is refused, it would be open to the superior Court to come to its own finding on

the basis of the explanation for the delay given by the party. The object of fixing the time limit under the Limitation Act, 1963 is not meant to destroy the rights. It is founded on a public policy fixing a life span for the legal remedy for the general welfare.

8] In *Collector, Land Acquisition, Anantnag* (supra), the Apex Court held that the Court should adopt a reasonable approach in condoning the delay. It proceeded on the premise that an ordinarily a litigant does not stand to benefit by lodging an appeal late. The refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. As against this when the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. "Every day's delay must be explained" does not mean that a pedantic approach should be made.

9] In *Collector, Land Acquisition, Anant Nag* (supra), the Hon'ble Apex Court further held that the doctrine must be applied in a rational, commonsense and pragmatic manner. When the substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. There

is no presumption that the delay is occasioned deliberately, or on account of culpable negligence or on account of malafides. Lastly, a litigant does not stand to benefit by resorting to delay and in fact he runs a serious risk. It was culled out that it must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and expected to do so.

10] The applicants had set out that they had no local office and no local means or resources and had therefore to fall back upon the Counsel elsewhere. In that context, they had tried to first get in touch with their erstwhile Counsel but on account of their inability had contacted a Counsel in Mumbai who was instructed to draft the appeal and file it before this Court. The applicants for that matter had also set out that they had no local office and due to the lack of logistics and resources in Mumbai, they could not assist the Counsel and in that process a considerable time had lapsed and therefore, they had decided to draft the appeal through their regular Counsel in Delhi.

11] It is not as if the applicants rested at that but pursued the legal remedy which took some time to settle the draft and re-verify the same and ultimately on account of Durga Puja Vacation in Kolkata, the appeal could not be finalised and

lastly aggravated on account of the Diwali Vacation in Delhi. Therefore, it cannot at all be heard on behalf of the respondents that the applicants were unconcerned about their right and remedy of appeal and or that it was only on account of the notice of winding up that they were triggered into action to file the present appeal. The other aspect about want of Resolutions too cannot be entertained inasmuch as the adopting of Resolutions to take particular steps would be an internal matter of the applicants and which need not necessarily form a part of the Court records. There can be no dispute that the applicants being a Company would act through the Resolutions but it cannot be expanded to convey that these Resolutions adopted in the course of their business of processing the appeal should have formed a part of these records.

12] Therefore, summing the case of the applicants and the objections recorded by the respondents and the law on the point which is well settled in the matter of condonation of delay, i find that the applicants have sufficiently accounted for the delay in filing the appeal and which has necessarily to be condoned. Last but not the least, the submissions of Shri S.D. Lotlikar, learned Senior Counsel on behalf of the respondents that the appeal under the Act has to be strictly construed also cannot stand him in good stead inasmuch as there is a distinct time limit

to maintain an application under Section 34 of the Act. Such rigors attached to challenging of an arbitral award under Section 34 of the Act cannot be extended to the filing of an appeal as otherwise the very Act would have contemplated so and not having done so, the normal law would apply. In any view of the matter, the application is found meritorious and is therefore allowed.

NUTAN D.SARDESSAI, J

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