

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.4025 OF 2016

(M/s. George Construction Company, Nagpur ..vs.. Maharashtra State Power Generation Co. Ltd.,
Mumbai and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 15-07-2016

Heard Shri Shyam Dewani, Advocate for the petitioner.

2. The order passed by the learned District Judge condoning delay of seventeen days in filing application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act of 1996"), is challenged.

3. The submission on behalf of the petitioner is that the respondents were given intimation by the arbitral Tribunal that the award would be published on 23/24-09-2011, however, they have chosen to remain absent and not to collect the copy of award. It is submitted that the facts on record show that the respondents were aware that the award is passed on 23-09-2011 and therefore, it was their duty to collect the award immediately and the limitation for filing application under Section 34 of the Act of 1996 would

start from 24-09-2011. It is argued that if the limitation is calculated from 24-09-2011, then the application under Section 34 of the Act of 1996 should have been filed within three months from 24-09-2011 as per Section 34(3) of the Act of 1996 and the respondents could have availed further period of thirty days beyond three months, as per the proviso below sub-section (3) of Section 34 of the Act of 1996. According to the applicant, the application under Section 34 of the Act of 1996 should have been filed till 23-01-2012, however, the application is filed on 02-02-2012 and it could not have been entertained having been filed beyond the permissible period.

4. The provisions of Section 34(3) of the Act of 1996 provide that an application for setting aside arbitral award cannot be filed after three months have lapsed from the date on which the party making the application had received the arbitral award. It is clear that the limitation for filing the application for setting aside arbitral award starts on the date on which the party has received the arbitral award. This view is fortified by the judgment given by the Hon'ble Supreme Court in the case of *State of Maharashtra & Ors. vs. M/s. Ark Builders Pvt. Ltd.* reported in *AIR 2011 SC 1374*.

5. The learned Advocate for the petitioner has argued that for the purposes of Section 34 of the Act of

1996, in normal course the limitation would start when the party has received the arbitral award, however, the situation would be different if the party has knowledge of the date on which the arbitral award is passed/signed, the party is called upon to collect the copy of award and the party deliberately avoids to collect the copy of award. It is submitted that in this situation, it has to be treated that the limitation starts from the date of passing of the award.

Considering the clear and unambiguous provisions of sub-section (3) of Section 34 of the Act of 1996, the submissions made on behalf of the petitioner cannot be accepted. If the Legislature intended to provide for limitation of three months for filing the application for setting aside arbitral award from the date of passing of the award if the party is having knowledge about the date of passing of the award and the party is called upon to collect the copy of award, the provision would have been couched accordingly. It is well settled that if the language of the statute is clear and unambiguous, the words used in the provision should be given their natural meaning.

6. I do not find any illegality in the impugned order.
The petition is dismissed.

JUDGE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar.

Uploaded on : 27-07-2016.

P.A. to Hon'ble Judge.