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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.3198 OF 2017
IN
ARBITRATION APPEAL (ST.) NO.3598 OF 2017
WITH
CIVIL APPLICATION NO.11364 OF 2017
WITH
CIVIL APPLICATION NO.3197 OF 2017
IN
ARBITRATION APPEAL (ST.) NO.3601 OF 2017
WITH
CIVIL APPLICATION NO.11365 OF 2017**

1. Chetak Earth Movers,
Through its Proprietor
Mr Jaipal Singh s/o Kishansingh Chauhan,
aged about 42 years, Occu: Nil,
R/o. First Floor, "Pahlavi Niwas",
Near Jijamata School, Anand Nagar,
Nanded
2. Nagesh s/o Govind Katore,
Aged about 42 years, Occu: Nil,
R/o House No. 3443, Chikalwadi,
Near Jyoti Stone Nanded, Tahsil and
District Nanded

..APPLICANTS

VERSUS

Indusind Bank Ltd. Branch at Nanded,
Through its representative
Rajendrasingh Dilipsingh Tehra,
At, C/o Gudgila Automobiles,
Railway Overbridge Road,
Nanded 431 601

..RESPONDENT

Mr Soumitra Paliwal, Advocate for applicants;
Mr Umakant Patil, Advocate holding for Mr Amey J. Bhatt, Advocate for
respondent

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CORAM : NITIN W. SAMBRE, J.

DATE : 1st November, 2017

ORAL ORDER:

By these applications, the applicants seek condonation of delay of 974 days caused in filing arbitration appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "Act").

2. The awards in favour of the respondent came to be passed on 25th February, 2013, for execution of which Regular Darkhast/Arbitration Darkhast Nos.36 of 2013 and 37 of 2013 were filed before the court of learned Principal District Judge, Nanded.

3. The notices in the aforesaid execution proceedings were served on the present applicants on 17th October, 2013 and they have caused their appearances on 18th October, 2013.

4. The applicants thereafter on 7th March, 2014 filed applications under Section 34 (1) of the Act, questioning the awards dated 25th February, 2013, The said applications came to be rejected on the very same day i.e. 7th March, 2014. Rejection was mainly for two reasons; (a) that the application is not maintainable in the proceedings filed for execution of the award passed by the Arbitral Tribunal, as separate and independent proceedings under Section 34 of the Act are contemplated for taking exception to the awards and (b) even assuming that such application is maintainable in execution proceedings, still the applicants have failed to justify and explain delay under the provisions of Sub-section (3) of Section 34 of the Act. Feeling aggrieved by the said orders of rejection, the

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applicants have approached this Court under Section 37 of the Act.

5. Heard Mr Paliwal, learned Counsel appearing on behalf of the applicants and Mr Umakant Patil, learned Counsel appearing on behalf of the respondent.

6. Mr Paliwal, by inviting attention of this Court to the judgments of the Apex Court in the matters of **Union of India vs. Tecco Trichy Engineers & Contractors**, reported in **(2005) 4 Supreme Court Cases 239** and **Benarsi Krishna Committee and ors. vs. Karmyogi Shelters Private Limited**, reported in **(2012) 9 Supreme Court Cases 496**, as also language employed in Sections 31, 32 and 33 of the Act, would urge that the signed copy of the award was not delivered by the Arbitral Tribunal to the applicants and it is only through execution proceedings, applicants came to know about passing of arbitral awards, on 17th October, 2013 when notices of said proceedings had been served on them and their appeared immediately on 18th October, 2013 in the said proceedings, collected the documents viz. copies of the awards and after requisite preparation has filed proceedings under Section 34 of the Act and on 7th March, 2014. According to him, since the copies of awards were not properly served pursuant to the provisions of Sections 31, 32 and 33 of the Act, limitation would begin to compute or run from the date on which copies of the awards were made available to the applicants by the executing court.

7. Next submission of Mr. Paliwal is, aforesaid being the position about service of award on applicants, exception by the applicants to the award

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only at the stage of execution proceedings is well within limitation and having regard to the same, the learned Principal District Judge ought not to have rejected the same by erroneously taking recourse to the provisions of Sub-section (3) of Section 34 of the Act. In addition, learned counsel would urge that if in the opinion of learned Principal District Judge applications under Section 34 of the Act were not maintainable in the execution proceedings, then it was open for him to return the said applications for being presented in a proper manner. He submits that the learned Principal District Judge has rather entertained the applications and decided the same on merits by observing that delay cannot be condoned, by travelling beyond the scheme of Section 34 of the Act. Based on the said issue, he sought indulgence of this Court.

8. Mr Patil, learned Counsel appearing on behalf of the respondent would urge that the very applications for condonation of delay in these proceedings under Section 37 of the Act are without any basis. According to him, once Section 34 of the Act expressly provides for limitation, the provisions of the Limitation Act, particularly in the wake of Section 29 thereof, do not attract in the present case as the same are expressly barred. He would then urge that the applicants have failed to explain the date of knowledge with receipt of copies of arbitral awards. According to him, the fact that applications under Section 34 of the Act were moved before the Principal District Judge speaks of knowledge of the scheme of the Act and in that case, filing of Writ Petitions questioning orders under sub-section 1 of Section 34 of the Act, was purely with an intention to kill the time. Delay caused in preferring these appeals under Section 37 of the

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Act is not at all explained.

9. He would then invite attention of this Court to the various orders passed by this Court on earlier occasion, whereby certain indulgence was shown by granting protection in favour of the present applicants *qua* auction of their properties in execution of arbitral award and also date of filing of petition and date of order on such petition. He, therefore, sought dismissal of the applications.

10. Considered rival submissions.

11. The undisputed factual matrix as could be borne out from the record is, the awards came to be passed on 25th February, 2013 and present applicants filed applications under Section 34 of the Act on 7th March, 2014 in Regular Darkhast Nos.36 of 2013 and 37 of 2013 arising out of execution of the awards passed by Arbitral Tribunal. Once the applicants on their own say that they got knowledge about pendency of execution proceedings on 7th October, 2013, whether filing of applications by them on 7th March, 2014, after a period of five months is justified, is required to be considered. It is also required to be considered as to whether any latitude can be given to the applicants, particularly when copies of the awards were received by them from the execution proceedings or from Arbitral Tribunal, subsequent thereto.

12. Having scanned the record with the assistance of respective learned Counsel, it is noticed that applicants have failed to bring forth the date on which copies of awards were made available to them for the first time after

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the notices of execution proceedings were served on them.

13. Though the Arbitral Tribunal while passing the impugned orders has noted that independent proceedings under Section 34 of the Act should have been filed by the applicants and should not have caused intervention in execution proceedings, during course of hearing of present applications, an option was given to applicants to take out such proceedings, to which they declined and insisted on hearing the matters on merits.

14. In the aforesaid background, this Court proceeded to consider various dates so as to find out whether there was any scope for condonation of delay as prayed by the applicants while entertaining applications under Sections 34 or 37 of the Act. From the dates narrated herein above, it is expressly clear that applications under Section 34 of the Act came to be moved by the applicants after unexplained lapse of period of almost five months from the date of knowledge of passing of such awards, which admittedly could be borne from the record as 7th October, 2013. In the circumstances, if the scheme of sub-section 3 of Section 34 of the Act is examined, the fact remains that said Section acts as a code in itself for considering the aspect of limitation and as such, the provisions of the Limitation Act cannot be read down in the proceedings under Section 34 of the Act while considering the issue of condonation of delay, if any.

15. In view thereof, in my opinion, the learned Principal District Judge was right in observing that the Court need not to travel beyond the scope of sub-section (3) of Section 34 of the Act and having noted that such

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applications for condonation of delay are beyond the period prescribed under sub-section (3) of Section 34 of the Act, rightly rejected the same.

16. In the aforesaid background, the judgments relied upon by the learned Counsel appearing on behalf of applicants in the matters of Union of India vs. Tecco Trichy Engineers & Contractors and Benarsi Krishna Committee (supra) considering the scheme envisaged under Section 31 of the Act *qua* delivery of arbitral award to party itself will hardly be of any consequence.

17. So far as present appeals under Section 37 of the Act are concerned, applicants have claimed that there is delay of 974 days, which they have sought to explain by relying upon their act of contesting Regular Darkhasts viz. execution proceedings, the instructions given to their Lawyer and filing of Writ Petition Nos.4947 and 4948 of 2016 before this Court. Perusal of the reasons and grounds as are raised in the applications depict that since the applicants were pursuing proceedings before the writ court and also executing court and their Lawyer has not advised them properly, they claim that delay has been caused in preferring present appeals. No doubt, Section 37 of the Act does not provide for limitation.

18. It is then to be noted that if other provisions of the Act, such as Sections 11, 13 and 16 are perused, the Act provides for limitation wherever it was required.

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19. By not providing limitation within which appeal should have been filed under Section 37 of the Act, what is to be noticed is, the period of limitation has to be borne out of either Code of Civil Procedure or under Limitation Act. Be that as it may, what was expected of the applicants was to explain delay; may not be day-to-day delay. What could be noticed is, the applicants have tried to blame their Lawyer of his action of prosecuting Regular Darkhasts and of filing writ petition in 2016 before this Court. It is worth to note here, that the fact that the applicants have suffered order of rejection under Section 34 (3) of the Act, whereby their applications under Section 34 were rejected, was well within their knowledge. Hence, it could be inferred that the applicants were aware of the provisions of the Act, so did the provisions of Section 37 of the Act of filing an appeal. Just because the applicants were pursuing Regular Darkhasts or had filed writ petition in 2016 before this Court does not give any lever not to file appeals within a reasonable period. The delay caused in filing appeals under Section 37 of the Act is not at all explained by the applicants. Rrather their conduct takes this Court to the conclusion that though they were knowing fully well of the availability of remedy of appeal under Section 37 of the Act, yet have not taken recourse thereto.

20. Apart from above, Mr Patil, learned Counsel appearing on behalf of respondent has rightly invited attention of this Court to the various orders passed in favour of the applicants, whereby certain protection was granted in favour of applicants *qua* execution proceedings, however, in spite of indulgence shown by this Court, applicants have failed to comply with the conditions, which has prompted this Court to vacate interim relief granted.

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21. In the aforesaid background, in my opinion, no case for showing any indulgence, in view of scheme of Section 37 of the Act for preferring appeal against arbitral award, is made out.

22. Civil Applications lack merit and stand dismissed accordingly.

23. In view thereof, pending Civil Applications do not survive and stand disposed of accordingly.

Authenticated copy of this order be supplied to the learned Counsel appearing on behalf of the applicants.

(NITIN W. SAMBRE, J.)

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