

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 4647 OF 2017**

Union of India	)	
through the Garrison	)	
Engineer (I) Ministry of	)	
Defence, Military Engineering	)	
Service (P) Factory, Kirkee,	)	
Pune – 3	)	..Petitioner

Vs.		
M/s Pal Construction Engineers	)	
& Contractors, having its	)	
address at G-23, Shanti Kunj	)	
Opposite GPO Pune -1	)	..Respondent

Ms S. I. Shah i/b S. I. Shah & Co. for the Petitioner
Mr. Ketan Joshi i/b Ergo Juris for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 21st MARCH, 2017

ORAL JUDGMENT

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The order dated 9-1-2017 passed by the Learned 10th Joint Civil Judge Senior Division, Pune is taken exception to by way of the above Petition. By the said order, the application for condonation of delay in filing the application for restoration came to be rejected.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner herein had filed an application under Section 34 of the Arbitration and Conciliation Act 1996 for challenging the Award dated 28-12-2002 passed by the sole Arbitrator in the arbitral proceedings between the Petitioner and the Respondent. The said application under Section 34 was filed in the Court of the Learned Civil Judge Senior Division, Pune. It seems that the said application was transferred from one court to another and ultimately came to be dismissed for non prosecution on 11-4-2014. The Petitioner thereafter filed the instant application being Misc Application No.340 of 2015 for restoration, since the said Misc Application was belated by about 319 days the Petitioner filed an application for condonation of delay which was marked as Exhibit 1. The Petitioner set out the reasons in the said application for condonation of the said delay. The sum and substance of the case of the Petitioner is that there was a communication gap between the Learned Government Pleader who was appearing for the Petitioner in the said application filed under Section 34 as a consequence of which the Petitioner was not aware of the dates when the application was listed before the Trial Court, resulting in the dismissal of the application for non prosecution. It was also the case of the Petitioner that the said application was transferred from one court to another atleast on 5 occasions. The grounds set out by the Petitioner did not commend acceptance to the Learned Joint

Civil Judge Senior Division. The Learned Joint Civil Judge Senior Division held that no useful purpose would be served by condoning the delay as the original application filed under Section 34 was filed before the wrong court as it was required to be filed before the District Court and especially the Learned Principal District Judge, Pune. As indicated above it is the said order dated 9-1-2017 which is taken exception to by way of the above Petition.

4 What is required to be noted in the instant matter is that the Learned 10th Joint Civil Judge Senior Division, Pune, after holding that the original Petition has been filed in the wrong court has proceeded to adjudicate the matter i.e. application for condonation of delay on merits. This obviously could not have been done by the Learned Judge having regard to the fact that he had ruled that he did not have the jurisdiction to entertain the main Application filed under Section 34 and thereby has held that he did not have the jurisdiction to entertain the application for condonation of delay also. Hence on the short ground that the application for condonation of delay has been dealt with by the Court which did not have the jurisdiction, the impugned order dated 9-1-2017 would have to be set aside and the application would have to be relegated back to the proper court by granting permission to the Petitioner to file the same or get it transferred to the proper court. Hence the following directions :

(i) The impugned order dated 91-2017 passed by the Learned 10th Joint Civil Judge Senior Division Pune, is quashed and set aside. Misc Application No.340 of 2015 as also the application for condonation of delay is accordingly restored to file.

(ii) The Petitioner may file an application for transfer of the Application filed under Section 34 of the said Act as also the instant application being Misc Application No. 340 of 2015 along with the application for condonation of delay to the Court of the Learned Principal District Judge Pune.

(iii) The Learned Principal District Judge to hear and decide the application for condonation of delay on its own merits and in accordance with law. It is clarified that the contentions of the parties are kept open for being urged before the said Court.

(iv) The execution proceeding i.e. Special Darkhast No.2148 of 2014 which has been filed by the Respondent would not be proceeded with for a period of 4 weeks from date so as to enable the Petitioner to carry out the directions as contained in clause (ii) above.

(v) If the delay is condoned, the hearing of the Misc Application No.340 of

2015 is expedited and in the event the same is allowed, the hearing of the Application filed under Section 34 is also expedited.

5 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition. The parties to act upon an ordinary copy of this order duly authenticated by the court shirestedar.

[R.M.SAVANT, J]