

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

ARBITRATION APPEAL NO. 14 OF 2017

IN

CIVIL MISC. APPLICATION NO. 279 OF 2016

WITH

CIVIL APPLICATION NO.15 OF 2017

The State of Maharashtra	]	
[Through the Executive Engineer,	]	
National Highway Division,	]	
Solapur 413 003.	]	Appellant

Vs.

Atur India Private Limited.	]	Respondent
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 Mr. Yogesh Dabke, A.G.P, for appellant.
 Mr. P.K. Dhakephalkar a/w Mr. S.R. Ganbawale, for respondent.

CORAM : R.G. KETKAR, J.

DATE : 16TH JUNE, 2017.

P.C.

Heard Mr. Dabke, learned A.G.P for the appellant and
 Mr. Dhakephalkar, learned Senior Counsel for the respondent at
 length.

2. By this appeal under Section 37 of the Arbitration and
 Conciliation Act, 1996 [for short 'Act'], appellant has challenged the

judgment and order dated 20th February, 2017 passed by the learned Principal Judge, Solapur in Misc. Application No. 279 of 2016. By that order, application made by the appellant for condonation of delay of 13 days in filing application under Section 34 of the Act challenging the Award dated 21st February, 2016 was rejected.

3. In support of this appeal, Mr. Dabke contended that Award was made on 21st February, 2016 and copy of the Award was made available to the parties by the learned Arbitrator on the same day. Application under Section 34 of the Act was presented before the Principal District Judge on 18th June, 2016. He invited my attention to Section 34 of the Act and submitted that application for setting aside Award has to be made within three months from the date on which the parties making that application had received the arbitration award. Proviso thereto lays down that if the Court is satisfied that applicant was prevented by sufficient cause from making an application within the said period of three months, it may entertain the application within further period of 30 days and not thereafter. He submitted that period of 30 days expired on 21st June, 2016 and thus, application presented on 18th June, 2016 was perfectly within time stipulated under Section 34

(3). He, therefore, submitted that the learned Principal District Judge committed serious error in dismissing the application.

4. On the other hand, Mr. Dhakephalkar supported the impugned order. He submitted that application under Section 34 was presented on 27th June, 2016. He also tendered photo copy of the application made under Section 34 of the Act which indicates that it was presented on 27th June, 2016. Same is taken on record and marked 'X' for identification.

5. Mr. Dhakephalkar also relied on the decision of the Apex Court in case of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department & Ors., (2008) 7 Supreme Court Cases 169** to contend that in view of express language of proviso to Section 34 (3) of the Act, application for setting aside the Award cannot be entertained after expiry of 90+30 days.

6. I have considered rival submissions advanced by the learned Counsel for the parties. I have also perused material on record. As noted above, Award was made on 21st February, 2016 and the same was made available to the parties on the same date

i.e on 21st February, 2016. Appellant claims that application under Section 34 of the Act was filed on 18th June, 2016. A perusal of application under Section 34 shows that it was presented on 27th June, 2016 and not on 18th June, 2016 as claimed by the applicant. Learned Principal District Judge has considered this aspect in paragraph 6 and recorded a categorical finding that application for setting aside the Award was filed on 27th June, 2016. In case of **Consolidated Engineering Enterprises [supra]**, the Apex Court has held that proviso to Section 34 (3) being a specific legislation excludes applicability of general provisions contained in S.5 of the Limitation Act. Court, therefore, has no discretion to extend limitation beyond 30 days prescribed in proviso to Section 34 (3) even if sufficient cause is shown for it.

7. In view thereof, I do not find that the learned Principal District Judge has committed any error in rejecting application for condonation of delay. Hence, appeal fails and the same is dismissed. In view of dismissal of the appeal, Civil Application No. 15 of 2017 for stay does not survive and the same is disposed of. Order accordingly.

[R.G. KETKAR, J.]