

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 43 OF 2016
IN
ARBITRATION APPEAL [STAMP] NO. 17558 OF 2016
WITH
CIVIL APPLICATION NO. 21 OF 2017

Union of India & Anr.	]	Applicants
Vs.		
Shri Bhola Singh ACE, & Anr.	]	Respondents
.....		
Ms. Jyotsna N. Pandhi, for applicant.		
Mr. Sandesh D. Patil, for respondent No.2.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 21ST JULY, 2017.

P.C.

Heard Ms. Pandhi, learned Counsel for the applicants and Mr. Patil, learned Counsel for respondent No.2 at length.

2. This application is taken out for condoning delay of 1 year and 281 days in filing the appeal u/s 37 of the Arbitration and Conciliation Act, 1996 [for short 'Act'] against the judgment and order dated 18th June, 2014 passed by the learned Principal Judge, Thane in Arbitration Petition No. 208 of 2008. That Petition was instituted by the applicants herein u/s 34 of the Act on 18th September, 2008

challenging the Award dated 23rd June, 2008 made by the first respondent herein. In the application and additional affidavit dated 27th April, 2017, the applicants have given following date-wise details:

Sr. No.	DATE	DETAILS
[1]	18.06.2014	Learned Principal District Judge decided Arbitration Petition No. 208 of 2008 filed by the applicants.
[2]	19.06.2014	Applicants have applied for certified copy.
[3]	05.07.2014	Government's Counsel received certified copy which was forwarded to the applicants.
[4]	12.07.2014	Applicants received certified copy.
		Applicants thereafter sought opinion of the Government's Counsel for challenging the impugned order.
[5]	01.08.2014	Applicants forwarded papers of Arbitration Petition No. 208 of 2008 to the Minister of Law and Justice Branch, Secretariat.
[6]	20.08.2014	Applicants received opinion from Ministry of Law and Justice, Branch, Secretariat.
[7]	21.08.2014	Applicants forwarded opinion of Higher Authorities i.e CWF (AF) Lohogaon, Pune for their further decision and necessary action. Copy of that letter was also forwarded to Chief Engineer [AF], Gandhi Nagar.
[8]	19.09.2014 & 09.10.2014	The Commander Works Engineer (AF) Lohogaon, Pune addressed letters to Head Quarters of Chief Engineer (AF) Lohogaon, Gandhi Nagar requesting for earlier action for challenging the impugned order.
[9]	06.01.2015	Commander Works Engineer (AF) Lohogaon,

		Pune addressed a letter to GE (AF) Thane requesting him to take action for filing appeal against the impugned order.
[10]	18.01.2015	Higher Authorities conveyed their decision to file appeal.
[11]	19.01.2015	Garrison Engineer (AF) requested Minister of Law and Justice to nominate Government Counsel for drafting appeal and filing the same in the Court.
[12]	09.03.2015	Applicant No.2 addressed a letter to the 2 nd respondent offering to make part payment of admitted amount and requested hand receipt of the same.
[13]	23.03.2015	Respondent No.2 refused to accept part payment.
[14]	In the first week of April, 2015	Government Counsel prepared appeal and requested to send a cheque for paying Court fees payable in the appeal.
[15]	In May, 2015	Concerned AGE was transferred to Kochi and through oversight did not convey any instructions for payment of Court fees before being transferred.
[16]	November, 2015.	The new AGE [Contracts] applied for sanction of the Court fees payable in the appeal.
[17]	In February, March, 2016.	Applicants got sanction for payment of Court fees and the amount was transferred to the applicant's account by RTGS without informing the said fact to the applicants Advocate.
[18]	May, 2016.	The applicants made inquiry whereupon Advocate for the applicants came to know about payment of Court fees in his account. Due to Summer Vacation, applicant's Advocate could not pay Court fees and file appeal.
[19]	24.06.2016	The present appeal is filed.

The applicants are, therefore, praying for condonation of delay of one

year and 281 days in filing the appeal.

3. In support of this application, Ms. Pandhi relied upon decision of the Apex Court in case of **Indian Oil Corporation Limited and others Vs. Subrata Borah Chowlek and others, (2010) 14 Supreme Court Cases 419** and in particular, paragraphs 9 and 10 thereof. In paragraph 9, the Apex Court referred to decision of **State (NCT of Delhi) v. Ahmed Jaan, (2008) 14 Supreme Court Cases, 582**, wherein it was observed that although no special indulgence can be shown to the Government which, in similar circumstances is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels, highlighted the observations in the case of **State of Nagaland Vs. Lipok Ao, (2005) 3 Supreme Court Cases, 752**. In paragraph 9, the Apex Court reproduced paragraph 11 of the decision in the case of **State of Nagaland** wherein it is observed as under:

“11.....15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay –intentional or otherwise---is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with

pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process”.

4. In paragraph 10, the Apex Court observed that though Section 5 of the Limitation Act, 1963 envisages the explanation of delay to the satisfaction of the Court, and makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependent on the actions of its officials, who often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and, therefore, certain amount of latitude is permissible in such cases.

5. Ms. Pandhi submitted that conduct of the applicants does not indicate inaction or negligence or mala fides and the explanation furnished for condonation of delay of 1 year and 281 days constitutes a sufficient cause and deserves to be accepted.

6. On the other hand, Mr. Patil submitted that there was delay of 59 days in the case of **Indian Oil Corporation Limited and others** (supra). He relied upon decision of Apex Court in case of **Office of the Chief Post Master General Vs. Living Media India Ltd**, AIR 2012 SC 1506 and in particular paragraph 13 thereof. In that case, the Court was considering condonation of delay of 427 days in filing the appeals. In paragraph 4, reason for delay was referred to date-

wise. In paragraph 13, it was observed thus:

“In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay”.

7. Mr. Patil also relied upon decision in case of **Pundlik Jalam Patil (D) by Lrs Vs. Exe. Eng. Jalgaon Medium Project and Anr, 2008 (6) ALL Mr (SC) 954**, and in particular paragraph 24 thereof. In that case, the Apex Court was considering request for condonation of delay of 1724 days in filing appeals. In paragraph 24, Apex Court observed thus:

“It is true when the State and its instrumentalities are the applicants seeking condonation of delay and they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Government authorities. Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government

makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned Counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the bar without being any proper foundation in the pleadings”.

8. Lastly, he relied upon decision in the case of **Commissioner of Wealth Tax, Bombay Vs. Amateur Riders Clu, Bombay, 1994 (Supp) Supreme Court Cases 603** and in particular paragraph 3. In that case, the Apex Court was considering the question of condonation of delay of 264 days in filing the appeal. Paragraph 3 reads thus:

“This explanation is incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several cases in the past, we hoped that the matters might improve. There seems to be no visible support for this optimism. There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant, as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation

offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest”.

He, therefore, submitted that no sufficient cause is made out by the applicants and, therefore, application deserves to be dismissed.

9. I have considered the rival submissions of the learned Counsel appearing for the parties. I have also considered material on record. I have already dealt with explanation given in the application as also additional affidavit. As noted earlier, there is delay of 1 year and 281 days in filing appeal. It appears that applicants have paid Court fees of Rs. 8915/-. The explanation offered by the applicants in the application as also additional affidavit does not inspire confidence. Explanation offered indicates conduct of the applicants. It indicates inaction and negligence on the part of the applicants. There is inordinate delay of 1 years and 281 days in filing the appeal. It has come on record that sanction was given for filing appeal as far as on 18th January, 2015. Government Counsel appointed by the applicants had prepared appeal in the first week of April, 2015 and still appeal is presented on 24th June, 2016.

10. Ms. Pandhi relied upon decisions of the Apex Court in the case of **Indian Oil Corporation Limited and others [supra]**. In that

case, there was delay of 59 days. The Apex Court also referred to its decision in **State of Nagaland** [supra] and reproduced paragraph 11. As against this, Mr. Patil relied upon decision in case of **Pundlik Jalam Patil** [supra], **Commissioner of Wealth Tax, Bombay** [supra] and **Office of the Chief Post Master General** [supra]. In the case of **Office of the Chief Post Master General** [supra], the Court was considering delay of 427 days in filing the appeal. In the case of **Pundlik Jalam Patil** [supra], the Court was considering request for condonation of delay of 1724 days. In the case of **Commissioner of Wealth Tax, Bombay** [supra], the Court was considering question of condonation of delay of 264 days in filing the appeal. As noted earlier, in the present case, delay is of one year and 281 days, that is to say of 646 days. After considering date-wise details given by the applicants, I do not find that the applicants have made out a sufficient cause for condoning delay. Hence, the application fails and the same is dismissed.

11. In view of dismissal of the application, Arbitration Appeal Stamp No. 17558 of 2016 does not survive and the same is disposed of. In view of disposal of the appeal Stamp No.17558 of 2016, Civil Application No. 21 of 2017 for stay also does not survive and the same is also disposed of. Order accordingly.

[R.G. KETKAR, J.]