

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8298 OF 2012

M/s. Harsha Wheel Movers Pvt. Ltd. ... Petitioner

vs.

Kolhapur Municipal Council, Kolhapur ... Respondent

Mr. Nirman Sharma a/w Mr. Omprakash Jha i/b The Law Point for the
Petitioner.

Mr. Aniket U. Nikam for the Respondent/Council.

Coram	:	A.A.Sayed, J.
Reserved on	:	4 May 2017
Pronounced on	:	20 July 2017

JUDGMENT:

1 This Petition has been filed invoking Article 226 of the Constitution to impugn the order dated 6 July 2009 passed by the Civil Judge, Senior Division, Kolhapur. By the impugned order, the Application dated 19 October 2000 (in Miscellaneous Application No.98 of 1997) filed by the Petitioner seeking a direction that the Award dated 22 May 2006 of the sole Arbitrator be filed before the Court, came to be rejected as time barred. The Application (Exhibit 19) was filed under section 14 of the Arbitration Act, 1940 (hereinafter referred to as the 'Act of 1940').

2 The Application (Exhibit 19) reads as follows:

“Herein the application on behalf of petitioner is as under:

1) The Collector of Kolhapur was sole arbitrator in arbitration CR No.385/95. He is pleased to pass the award on 22.5.96. The said award and all the documents alongwith other papers in the said arbitration proceeding be directed to be produced and filed in the court by the arbitrator or the person authorised by him in this behalf. Therefore it is humbly submitted that the Hon'ble Court may direct the Collector of Kolhapur and the District Magistrate of Kolhapur for filing the award before this Hon'ble Court alongwith all the documents together with other papers in this case.

Date 19.10.2000.

Kolhapur.”

3 Section 14 of the Act of 1940 reads as follows:

“14. Award to be signed and filed.-

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been, taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3)”

Thus, sub-section (1) of section 14 contemplates giving of notice by the Arbitrator of making and signing the Award to the parties. Sub-section (2) on the other hand speaks about giving of notice by the Court to the parties after the Award is filed in Court.

4 Reference to Article 119 of the Limitation Act, 1963 is necessary.

It reads as under:

Description of suit	Period of limitation	Time from which period begins to run
119. Under the Arbitration Act, 1940,- (a) for the filing in Court of an award;	Thirty days	The date of service of the notice of the <u>making</u> of the award.
(b) for setting aside an award or getting an award remitted for reconsideration.	Thirty days	The date of service of the notice of the filing of the award.

(emphasis supplied)

Thus, Article 119 of the Limitation Act provides that under the Act of 1940, the Application for the filing in Court of an Award is required to be made within 30 days of the date of service of the notice of the 'making' of the Award. To wit, Article 119 does not speak of date of service of notice of 'filing' of the Award by the Arbitrator in Court but speaks of date of service of notice of 'making' of the Award by the Arbitrator.

5 In the present case, the date of service of the notice to the Petitioner by the Arbitrator of making of the Award is not mentioned in

the Application (Exhibit 19). However, in the main Miscellaneous Application No.98 of 1997 (u/s 17 of the Act of 1940 seeking a decree in terms of the Award), the Petitioner has averred that the cause of action arose on 22 May 1996 when the Award was passed and when it was communicated to the Petitioner by the Arbitrator. It is further averred in the Application that the Petitioner requested the Respondent by registered notice dated 27 July 1996 to pay the amount as per the Award. The said Miscellaneous Application No.98 of 1997 was filed on 18 March 1997. As indicated earlier though the Petitioner has admitted that the Award was communicated to him by the Arbitrator, he has not stated the date of receipt of the communication/notice. In these circumstances, even if we were to take the date of the filing of the main Miscellaneous Application No.98 of 1997 as the date of service of the notice for the purpose of computation of limitation, the date would run from 18 March 1997 at the furthest. The Application (Exhibit 19) under section 14 was however filed only on 19 October 2000. The Application (Exhibit 19) for filing the Award in Court is therefore made after more than 3½ years, which is beyond the period of limitation of 30 days as stipulated in section 119 of the Limitation Act, 1963. There was no Application filed for seeking condonation of delay. In the circumstances, the Trial Court has rightly held that the Application was barred by limitation.

6 In **Patel Motibhai Naranbhai vs. Dinubhai Motibhai Patel, AIR 1996 SC 997**, it has been held by the Supreme Court in paras 7 and 9 as follows:

“7. ... Article 119 of the Limitation Act lays down a time limit for making an application for filing the Award in Court or for setting aside the Award or getting the Award remitted for reconsideration...

9. ... An application for filing the award in Court has to be made within thirty days from the date of service of the notice of making of the award under Article 119 of the Limitation Act. Even if it is held that Article 119 will apply only to an application made by a party and not by the arbitrator, Article 137 will come in the way of the arbitrator's making any application beyond the period of three years from the date of making of the award.”

7 In **Parasramka Commercial Company vs. Union of India, 1969 (2) SCC 674**, the Supreme Court has held in para 5 that 'A written notice clearly intimating the concerned that the Award had been made and signed, in our opinion certainly starts limitation.'

8 Moreover, it is noticed that impugned order was passed on 6 July 2009 and the present Petition is filed on 31 July 2012. There is no explanation in the Petition for the inordinate delay. The Petition thus suffers delay and laches.

9 For the aforesaid reasons, no interference is warranted in the impugned order. The Petition is dismissed. Rule is discharged.

(A.A. Sayed, J.)

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