

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1076 OF 2017
IN
APPEAL (L) NO.482 OF 2016
IN
ARBITRATION PETITION NO.386 OF 2016
WITH
NOTICE OF MOTION (L) NO.1448 OF 2017
IN
APPEAL (L) NO.482 OF 2016
IN
ARBITRATION PETITION NO.386 OF 2016

M/s.Vikram Impex and others Applicants

In the matter between :

M/s.Vikram Impex and others Appellants
versus

M/s.Enreach Enterprises Pvt.Ltd. Respondent

Mrs.Bhagirathy Bahulayam for applicants/appellants.
Mr.Vivek Patil with Mr.Yogendra Shirwadkar i/by Vivek Patil and
Associates for Respondent.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 6th September 2017

PC :

1. At the outset our attention is invited by Mr.Patil appearing for respondent to an order dated 26th July 2017 in this appeal, as also the notice of motion for condonation of delay. That order reads as under :

" *The appellant seeks condonation of delay in filing appeal.*

Learned counsel appearing for the parties to address the court as to whether the delay in filing appeal under Section 37 of Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is condonable ?

Learned counsel for the respondent tendered synopsis, which is taken on record. Learned counsel for the appellant tendered rejoinder to the synopsis filed by the respondent, which is also taken on record.

Stand over to one week. Notice of Motion No.1076 of 2017 be shown on the board on the next date."

2. A similar issue had cropped up in an appeal before us and it was a commercial appeal. A specific contention was raised that Section 5 of the Limitation Act, 1963 is not applicable insofar as the appeals under Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act No.IV of 2016) are concerned. We have answered that issue by holding that there is no express exclusion from the scheme in Act No.IV of 2016 as far as applicability of Sections 4 to 24 of the Limitation Act, 1963 is concerned. In such circumstances, Section 5 of the Limitation Act, 1963 would be applicable. In view thereof, we hold that present notice of motion is maintainable.

3. Having heard both sides and finding that there is a sufficient cause shown for delay in filing this appeal, we allow Notice of Motion No.1076 of 2017. It is made absolute in terms of prayer clause (A). There shall be no order as to costs.

4. We expect the Court Receiver not to move and take possession till next date. The appeal be listed for admission on 20th September 2017.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST