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

NOTICE OF MOTION (L) NO. 1262 OF 2017
IN
ARBITRATION PETITION (L) NO. 528 OF 2017
WITH
ARBITRATION PETITION (L) NO. 528 OF 2017

Mahesh Chand Sharma ...Applicant/Petitioner
VS
M/s Mahendra & Mahendra Financial
Services Ltd. ...Respondent.

.....
Mr Vijaykumar Sharma for the Applicant/Petitioner
Mr Amit Saple i/b Priya Crasto for the Respondent.

.....
CORAM : **B. P. COLABAWALLA, J.**
JULY 20, 2017.

P.C. :

Not on board. Mentioned. Taken on production board.

2 This Notice of Motion (“NMS”) has been filed seeking
condonation of delay in filing the Arbitration Petition to
challenge the arbitral award dated 24th December, 2013.

3 It is the case of the applicant that there has been a
delay of 1225 days in filing the Arbitration Petition. The
explanation for the aforesaid delay has been set out in

paragraphs 9,10 and 11 of the affidavit in support of this NMS. In a nutshell it is stated that after receipt of the arbitral award, the Petitioner approached the advocate at Jaipur High Court on 15th January, 2014 and handed over a copy of the said award to him and instructed him to take all necessary steps in the matter. In turn, the said advocate assigned said papers to another advocate on 15th April, 2014 to prepare necessary papers to get the award set aside. The second advocate, namely, Mr Hemant Sharma also took a Vakalatnama from the Petitioner. It is the case of the Petitioner that despite this, the said advocate took no steps for filing the necessary proceedings for setting aside the arbitral award and the Petitioner came to know of the same only in the month of December 2016 when the execution proceedings were served upon the Petitioner. It is only thereafter, that the Petitioner has approached this Court for setting aside the arbitral award by filing the present Arbitration Petition. It is, in these circumstances, that the Petitioner prays that the delay of 1225 days be condoned.

4 Section 34(3) of the Arbitration and Conciliation Act, 1996 (“the Act”) clearly stipulates that, an application for

setting aside the arbitral award may not be made after three months have lapsed from the date on which the party making the application had received the arbitral award or, after a request has been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal. The proviso to Section 34(3) of the Act empowers the Court to condone the delay for a further period of 30 days if the Court is satisfied that the Petitioner was prevented by sufficient cause from making an application within the said period of three months. What is important to note is that after a further period of 30 days, the Court has no power to condone the delay. This issue is now no longer *res integra* and is squarely covered by the decision of the Supreme Court in the case of **Union of India Vs Popular Construction Co.**¹. Paragraph 12 of this decision read thus:

“12 As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act.

¹ (2001) 8 Supreme Court Cases 470

Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

5 It is, therefore, clear that the Court has no power to condone the delay in filing the Arbitration Petition beyond the extended period of 30 days. In the facts of the present case, admittedly, the award was received by the Petitioner sometime in the month of January 2014. The present petition has been filed in May/June 2017. Therefore, it is clearly way beyond the initial period of 3 months as well as the additional period of 30 days as contemplated under Section 34(3) of the Act read with its proviso. I am, therefore, of the considered view that I have no power to condone the delay of 1225 days as sought for in this Notice of Motion. It is, therefore, accordingly dismissed. In view of dismissal of the Motion, consequently the Arbitration Petition is also accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)