

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 224 OF 2016
IN

COMMERCIAL ARBITRATION PETITION (L) NO. 290 OF 2016

Mumbai Metropolitan Region Development Authority ... Applicant

IN THE MATTER BETWEEN :

Mumbai Metropolitan Region Development Authority ... Petitioner

Versus

M/s. Patel Engineering Limited ... Respondent

Mr. A. Davar i/b. Little and Company for the Applicant / Petitioner.

Mr. Jithin Palakkal i/b. Ms. Priyanka Pawar, Mr. Charvy Hatkanagalekar for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 16TH JANUARY, 2017

P.C.:

1. The above Notice of Motion is taken out by the Petitioner - Mumbai Metropolitan Region Development Authority (MMRDA) in the above Commercial Arbitration Petition for the following relief :

"The delay of 27 days in filing the Arbitration Petition impugning the Award dated 11st August, 2016 be condoned."

2. Admittedly, the Petition is filed within a period of 120 days but beyond the period of three months from the date of the service of the Award. In support

of the above Notice of Motion, Affidavits dated 6th December, 2016 and 12th January, 2017 are filed. I have perused the same. The Award is dated 11th August, 2016 which was received by the Petitioner on the same day. The same was forwarded to Mr. P.D. Kulkarni, Techno-Legal Consultant of the Petitioner on 26th September, 2016 (inadvertently written as 26th November, 2016 in the Affidavit dated 6th December, 2016). A copy of the letter dated 26th September, 2016 under cover of which the same was forwarded by the Petitioner to the Techno-Legal Consultant for his opinion / recommendation for further course of action, is annexed as Exhibit-A to the Additional Affidavit dated 12th January, 2017. Admittedly, Mr. P.D. Kulkarni had regularly attended the Arbitration proceedings before the Arbitral Tribunal. Unfortunately, Mr. Kulkarni passed away on 13th October, 2016. Thereafter the Legal Cell of the Petitioner took steps to seek necessary approval from its higher authority to impugn the Award and thereafter filed the Arbitration Petition on 6th December, 2016 under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act).

3. Though the learned Advocate appearing for the Respondent has objected to the condonation of delay of 27 days i.e. beyond the prescribed period of three months as contemplated under Section 34 (3) of the Act, in view of the fact that the Officer who admittedly attended the proceedings before the Arbitral Tribunal, passed away on 13th October, 2016, it is obvious that the Petitioner must have faced difficulties in taking a decision as regards impugning the subject

Award by filing Arbitration Petition under Section 34 of the Act. I am therefore of the view that sufficient cause is made out by the Petitioner in not filing the above Arbitration Petition within a prescribed period of 90 days. Hence, the following order :

- i. The delay of 27 days in filing the above Arbitration Petition impugning the Award dated 11th August, 2016 is condoned.
- ii. The above Notice of Motion is accordingly disposed off.

(S.J.KATHAWALLA, J.)