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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.5563 OF 2015

Union of India ..Petitioner.

V/s.

M/s. Mohata Construction Co. ..Respondent.

Ms.S.I. Shah i/b. S.I.Shah & Co. for the petitioner.

Mr.S.C.Wakankar for respondent No.1.

CORAM: NITIN W.SAMBRE, J.

DATE : JANUARY 4, 2018

PC.:-

Heard the respective parties.

2. This petition take exception to the order dated December 9, 2014 passed by the Extra Joint Ad-hoc District Judge-1, Pune in Civil M.A. No.94/2010 wherein the learned Court below has refused to condone the delay caused in preferring an application seeking restoration of Miscellaneous Application No.948/2006 which was filed under section 34 of the Arbitration and Conciliation Act, 1996 ('the Act' for short).

3. At the behest of the respondent, an Award came to be passed on August 8, 2006, which is the subject matter of challenge in Miscellaneous Application No.948/2006 preferred under section 34 of the Act.

4. The learned counsel for the petitioner would urge that the Court below has committed error in refusing to condone the delay, as legal principle that default on the part of the lawyer, shall not cause prejudice to the litigant, was ignored. She tried to draw support from the judgment of the Apex Court in the matter of ¹*Rafiq and another V/s. Munshilal and another*, so as to substantiate her contention. She would claim that the Award of Rs.32 lakhs and that too at the cost of public exchequer warrants re-examination under section 34 of the Act. She submits that the order impugned be set aside by ordering condonation of delay in filing the application for restoration on reasonable conditions.

5. *Per contra*, learned counsel for the respondent would urge that the present petitioner has no *locus* to question the order impugned. He would urge that the Award in question was

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delivered against the Union of India whereas the petitioner-applicant is an officer who has preferred the present proceedings, which are under cloud, as he was not authorised or no such authorisation is produced on record in law permitting him to file an application under section 34 of the Act. He would strenuously urge that the Court below has appreciated all facets of the matter for which there is no convincing explanation in the petition to order condonation of delay.

6. Considered the rival submissions. It is not in dispute that the Award was delivered by the Arbitrator way back in 2006 particularly on August 8, 2006 which was the subject matter of the challenge before the learned District Judge under section 34 of the Act.

7. Against the award, an application under section 34 of the Act was filed which was dismissed in default.

It is claimed that the counsel for the petitioner before the Court of learned District, before whom application under section 34 of the Act was pending had not communicated the order of dismissal in default, thereby causing delay in moving an

application for restoration of the application under section 34 of the Act.

8. The learned Extra Joint Ad-hoc District Judge-1, Pune has dealt with the application for condonation of delay and noticed that there is no convincing explanation brought on record so as to order condonation of delay.

9. Perusal of the application and the consideration by the learned District Judge would reflect that ground as to a communication gap between the lawyer who was representing the interest of the petitioner-applicant and the non appearance of the lawyer are pressed into service for pursuing the application for condonation of delay in restoration, including that of failure to communicate the decision of dismissal of application under section 34 of the Act.

10. For the reasons mentioned in the order impugned the delay of 351 days is refused to be condoned by the learned Court below with an observation that the same was not satisfactorily explained.

11. In my opinion, in the interest of justice, a chance is required to be given to the petitioner by ordering condonation of delay, subject to the condition that the petitioner shall deposit cost of Rs.25,000/- before the learned District Judge, before whom the appeal under section 34 of the Act was pending. The learned District Judge can work out the equities between the parties by permitting the respondent to withdraw the costs, if deposited by the petitioner as ordered. The petitioner shall deposit the said costs within a period of eight weeks from today.

12. If the costs, as ordered, is deposited, the impugned order dated December 9, 2014 refusing to condone the delay passed by the learned Extra Joint Ad-hoc District Judge-1, Pune is quashed and set aside and it is ordered that M.A.948/2006 for condonation of delay stands allowed.

13. If the costs, as ordered, is not deposited within the period as stipulated hereinabove, the order refusing to condone the delay shall govern the proceedings.

14. In case the costs is deposited, the learned Extra Joint Ad-hoc District Judge-1, Pune shall proceed to decide the

application on its own merits without being influenced by the observations made hereinabove.

15. It is made clear that this Court has not stayed the Award delivered by the Arbitrator.

15. With these observations, the petition is disposed of.

(NITIN W.SAMBRE, J.)