

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

CIVIL REVISION APPLICATION NO. 479 OF 2017

M/s.Ganesh Builders	...	Applicant
V/s.		
State of Maharashtra	...	Respondent

- Mr.Surel S. Shah for the Applicant.
- Mr.A.R. Patil, A.G.P. for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned counsel for the Respondent.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicant is challenging the order dated 5th August 2017 passed by the Principal District Judge, Solapur, thereby allowing Miscellaneous Civil Application No.276 of 2016. It was filed by the Respondent-State for condonation of delay and restoration of Civil Miscellaneous Application No.139 of 2006 filed by the Respondent under Section 34 of the Arbitration and Conciliation Act, 1996 (*here-in-after referred to*

as, “the Act”).

3] The submission of learned counsel for the Applicant is that the award was passed in the year 2006. The application under Section 34 of the Act for challenging the said award was also filed in the same year. The matter remained pending before the District Court for more than 8 years and thereafter, on 3rd January 2014, the said application filed under Section 34 of the Act came to be dismissed for default. Thereafter, for more than 2 years and 9 months, Respondent has not taken any steps for restoration of the said application and only in the year 2016, Respondent has filed the application for condonation of delay and restoration of the said application. By that time, the execution proceedings were also filed, bearing Darkhast No.403 of 2016 and then only, the Respondent has filed this application and that too without giving any explanation about such enormous delay. Hence, the learned District Judge should not have allowed such application.

4] Moreover, it is submitted that, the learned District Judge has allowed the said application on the ground that, in view of decision of this Court in the case of *Fountain Head Developers V/s. Mrs. Maria Arcangela Sequeira*, AIR 2007 Bom.149, only the Principal Court of original jurisdiction i.e. Principal District Judge can alone entertain and decide such application under Section 34 of the Act; whereas, in

the present case, the application filed by the Respondent came to be dismissed by the 2nd Adhoc District Judge, Solapur. The learned Judge has therefore held that this is a sufficient cause for condonation of delay and for restoration of the application, as the application was dismissed by the wrong forum.

5] According to learned counsel for the Applicant, in view of the judgment of this Court, in the case of *Union of India Vs. Arun Kumar Deedwania, 2017 (4) Mh.L.J.130*, the view taken in the case of *Fountain Head Developers (supra)* is distinguished and it is held that when the matter is assigned by Principal District Judge to other District Judge, then there should not be any confusion as regards the jurisdiction and then such District Judge, will also have the jurisdiction to decide the application under Section 34 of the Act. According to learned counsel for the Applicant therefore, in view of this decision, the learned District Judge has committed an error in allowing the application for condonation of delay and for restoration of the Application filed under Section 34 of the Act, on the ground that it was dismissed for default by the wrong forum.

6] The second submission advanced by learned counsel for the Applicant is that, even if the matter is decided by a wrong forum, that order remains valid till it is set-aside. Hence, it is still capable of

legal consequences. Therefore, the Applicant cannot take shelter under the plea that Application was dismissed by wrong forum. He should have challenged the said order immediately. In this respect, learned counsel for the Applicant has relied upon the judgment of the Hon'ble Apex Court in the case of *Board of Trustees of Port of Kandla V/s. Hargovind Jasraj & Anr., (2013) 3 SCC 182*, wherein it was held that, “*an order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.*”

7] Here, in the case, it is urged that, even if the order of dismissal of the application was passed by the wrong Court, in that case also, it was necessary for the Respondent to challenge the said order immediately and that cannot be an explanation for condonation of delay of 2 years and 9 months.

8] Lastly, learned counsel for the Applicant has relied upon the judgment of the Apex Court in the case of *Postmaster General & Others V/s. Living Media India Limited & Anr., (2012) 3 SCC 563*, to submit that the Government does not deserve any special

consideration but has to be treated like any other private litigant. According to learned counsel for the Applicant, as observed by the Apex Court in this authority, merely because Respondent is a State authority, trial Court should not have shown the indulgence in the absence of any sufficient cause shown for condonation of delay.

9] It is true that, in this case, there is delay of 2 years and 9 months in filing the application for restoration. However, it is pertinent to note that the reason given for condonation of such delay is that the Respondent lost the track of the proceeding as the proceeding should have been in the Court of Principal District Judge, in view of the judgment of this Court in the case of *Fountain Head Developers (supra)*. It may be true that, after the transfer of the proceeding, the Respondent appeared in the Court of Adhoc District Judge also, but then Respondent was under the impression that the proper forum for conduct of the proceeding was the Court of Principal District Judge.

10] Secondly, it is true that, on account of dismissal of the said Application, the execution proceedings are filed but as on today also, the award is not executed. In this application for condonation of delay and restoration also, the Applicant has not appeared when the application was heard by the District Judge, as can be seen from the

observations made in the impugned order that, Advocate of Respondent i.e. present Applicant remained absent.

11] Impugned order passed by the District Judge shows that the learned A.G.P. for Respondent has pointed out various reasons as to why he lost the track of the case and those reasons were found to be sufficient by the District Judge.

12] Now once the learned District Judge has exercised his discretion in condoning the delay, on the grounds mentioned before it, in the Revisional jurisdiction, it would not be proper on part of this Court to interfere in exercise of the said discretion and substitute its own discretion, unless it is pointed out that the discretion exercised by the learned District Judge is perverse or against the material on record.

13] From the impugned order passed by the learned District Judge, it cannot be said that the learned District Judge has not adverted to the material placed before it and had decided the matter perversely. After all, endeavor of the Court has to be always to decide the matters coming before it on merits, instead of dismissing them on technical grounds. Here, in the case, the Court has to bear in mind that the award with interest is of the amount of more than Rs.90

Lakhs and it being a public money, the public interests are also involved. There is no question of Applicant suffering any loss, as ultimately if he succeeds, he will get the amount with interest. Hence, from this angle also, no interference is justified in the impugned order. In such situation, within the limited scope of the Revisional jurisdiction, this Court should restrain itself from interfering in the said discretion.

14] However, considering the delay in filing such application for restoration, it would be just and proper to impose the costs of Rs.50,000/- (Rs. Fifty Thousand Only) to be paid by the Respondent to the Applicant within a period of 8 weeks from today. Subject to this modification, the Civil Revision Application stands dismissed.

15] At this stage, learned counsel for the Applicant requests to extend the stay granted by this Court on 7th September 2017 for a further period of eight weeks. Learned A.G.P. opposes the said prayer. However, in the interest of justice, as the stay was granted by this Court and it is running till the date, it is extended for a further period of eight weeks, in order to enable the Applicant to approach the Hon'ble Supreme Court against this order.