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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION (L) NO.2268 OF 2018
IN
ARBITRATION PETITION (L) NO.643 OF 2018
WITH
NOTICE OF MOTION (L) NO.2269 OF 2018
IN
ARBITRATION PETITION (L) NO.643 OF 2018**

Tayyab Hussain s/o. Ayyub ...Applicant/Petitioner

vs

Mahindra And Mahindra Finance Ltd. ...Respondent

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Mr. Nasir Mohammed, a/w. Mr. Manoj Chauhan, i/b. Mr. Vinod P. Sangvikar, for the Applicant/Petitioner.

Ms. Neeta Jain, i/b. Ms. Priya Crasto, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 29 OCTOBER, 2018

P.C. :

. Notice of Motion No.2268 of 2018 seeks condonation of delay of 26 days in filing the arbitration petition. The petition is within 120 days, according to the Petitioner. According to the Respondent, the delay is over 120 days. The controversy, insofar as delay condonation is concerned, turns on service of the award on the Petitioner herein. It is the case of the Petitioner that the award was served on him on 22 February 2018, whilst it is the case of the Respondent that it was served on the Petitioner on 12 February 2018. There is no acknowledgement card produced in support of the Respondent's case that the award was so served on the Petitioner. What the Respondent instead relies upon is a

track report of the Department of Posts. It is not disputed that the Petitioner lives in Nuh, which is a backward village in the interiors of State of Haryana. The track report relied upon by the Respondent shows that the packet was received at Gurgaon Post Office on 12 February 2018. The packet of service is said to have been received within a few hours of its dispatch from NSH Gurgaon to Nuh SO and within a second of such receipt at Nuh SO, the packet is said to have been received by the addressee. It is impossible to believe that the Post and Telegraph Department of the Country, or any post office for that matter, can operate with such dispatch. In the premises, there being no evidence to show that the service was effected any time before 22 February 2018, the Petitioner's case that the packet of service was received by him on 22 February 2018 deserves to be believed. Accordingly, the notice of motion is made absolute in terms of prayer clause (a). The delay of 26 days is condoned. (The figure 49 days mentioned in prayer clause (a) is through oversight; the correct figure is 26 days.) The office may now number the arbitration petition and place the same for admission on 26 November 2018 along with Notice of Motion (L) No.2269 of 2018.

(S.C. GUPTE, J.)