

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 827 OF 2019

LOKMANYA MULTIPURPOSE COOPERATIVE
SOCIETY LTD., (MULT STATE) REP. BY
ITS AUT. OFFICER, DILEEP KOLE., ... Petitioner

Versus

ASHWIN GARTH DE SOUZA AND 3 ORS., ... Respondents

Mr. Pavithran AV, Advocate for the Petitioner.
Mr. Parag Rao, Advocate for the Respondent nos.1 to 3.

Coram:- C. V. BHADANG, J.

Date:- 19th September, 2019

P.C.

The challenge in this petition is to the order dated 14.08.2018 passed by the learned District Judge at Panaji, in Civil Misc. Application No.176/2017. By the impugned order, the learned District Judge has condoned the delay in filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act, for short).

2. The brief facts are that the learned Arbitrator had passed the award on 20.06.2016. Indisputably, a signed copy of the award was served on the respondents on 28.09.2016. The respondents instead of challenging the same under Section 34 of the Act, filed Writ Petition No.231/2017 before this Court challenging the said

award. That petition was filed on 27.10.2016. The said petition came to be disposed off on 30.03.2017 on the ground that the respondents (the petitioner in the said petition) have an alternate efficacious remedy of challenging the award under the provisions of the said Act. After the disposal of the said petition on 30.03.2017, the respondents filed a petition under Section 34 of the Act before the learned District Judge, accompanied by an application for condonation of delay on 17.07.2017 i.e. about 108 days after the disposal of the Writ Petition which delay has now been condoned by the learned District Judge.

3. I have heard Mr. Pavithran, the learned Counsel for the petitioner and Mr. Rao, the learned Counsel for the respondent nos.1 to 3. I have gone through the record.

4. Mr. Pavithran, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of CONSOLIDATED ENGINEERING ENTERPRISES VS. PRINCIPAL SECRETARY, IRRIGATION DEPARTMENT & ORS. (2008) 7 SCC 169, in order to submit that there is no jurisdiction to condone the delay beyond the period of 120 days as per Section 34(3) of the Act. The learned Counsel has referred to the explanation (a) of Section 14 of the Limitation Act in order to submit that for exclusion of the time under said Section, the day on which earlier proceedings were instituted

before the wrong forum and the day on which they ended, have to be counted. It is thus submitted that in terms of the said explanation, the period spent prior to the filing of the Writ Petition could not have been excluded as has been done by the learned District Judge.

5. Mr. Rao, the learned Counsel for the respondents, has raised a preliminary objection about the maintainability of the Writ Petition on the ground that eventually an appeal would lie under Section 37 of the Act in the event the award is set aside in the petition under Section 34 of the Act. Secondly, it is contended that the respondents were bonafidely prosecuting the remedy before this Court and the period spent from 27.10.2016 to 30.03.2017 has to be excluded under Section 14 of the Limitation Act. It is submitted that although the Court cannot condone the delay beyond the period of 120 days, there is no embargo on exclusion of time under Section 14 of the Act.

6. I have carefully considered the submissions made. It is now well settled that under Section 34(3) of the Act, there is no jurisdiction vesting in the Court to condone the delay beyond the period of 120 days, as has been held by the Supreme Court in CONSOLIDATED ENGINEERING (Supra).

7. In the present case, the record discloses that the Writ Petition

was filed after 29 days of the service of the signed copy of the award on 28.09.2016. Eventually, the petition under Section 34 of the Act came to be filed on 17.07.2017 i.e. after 108 days of the disposal of the Writ Petition. Apart from the fact that there is no acceptable explanation for such delay even after excluding the period spent in prosecuting the Writ Petition, the delay appears to be of 137(108 + 29) days which is beyond 120 days. The learned District Judge was in error in holding that the disposal of the Writ Petition would give a fresh period of limitation from the date of its disposal i.e. from 30.03.2019. The impugned order, in my considered view, condoning the delay, cannot be sustained, for want of jurisdiction to condone such delay. This is a case where the Court lacked jurisdiction to condone the delay beyond 120 days.

8. In the result, the following order is passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside. The application for condonation of delay is hereby dismissed.

(iii) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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